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THE GENERAL STATUTES OF NORTH CAROLINA

1973 INTERIM SUPPLEMENT

Volume 3C

NOTICE

This 1973 Interim Supplement to Volume 3C is noncumulative. It is to be used with 1964 Replacement Volume 3C and the 1971 Cumulative Supplement thereto until a new Replacement Volume 3C is received. This Interim Supplement does not contain new Chapter 153A, Counties, enacted by Session Laws 1973, c. 822, and effective February 1, 1974. New Chapter 153A will be found in Pamphlet No. 8 of the 1973 Advance Legislative Service.

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1971 CUMULATIVE SUPPLEMENT TO VOLUME 3C.

PAMPHLET NO. 8 OF THE 1973 ADVANCE LEGISLATIVE SERVICE.

Supplementing the 1971 Cumulative Supplement to Volume 3C

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THE MICHEL COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.

1978

THE GENERAL STATUTES OF NORTH CAROLINA

1973 INTERIM SUPPLEMENT

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
W. M. WILLSON, J. H. VAUGHAN AND SYLVIA FAULKNER

Volume 3C

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Preface

This Interim Supplement to Replacement Volume 3C contains the general laws of a permanent nature enacted at the 1973 Session of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

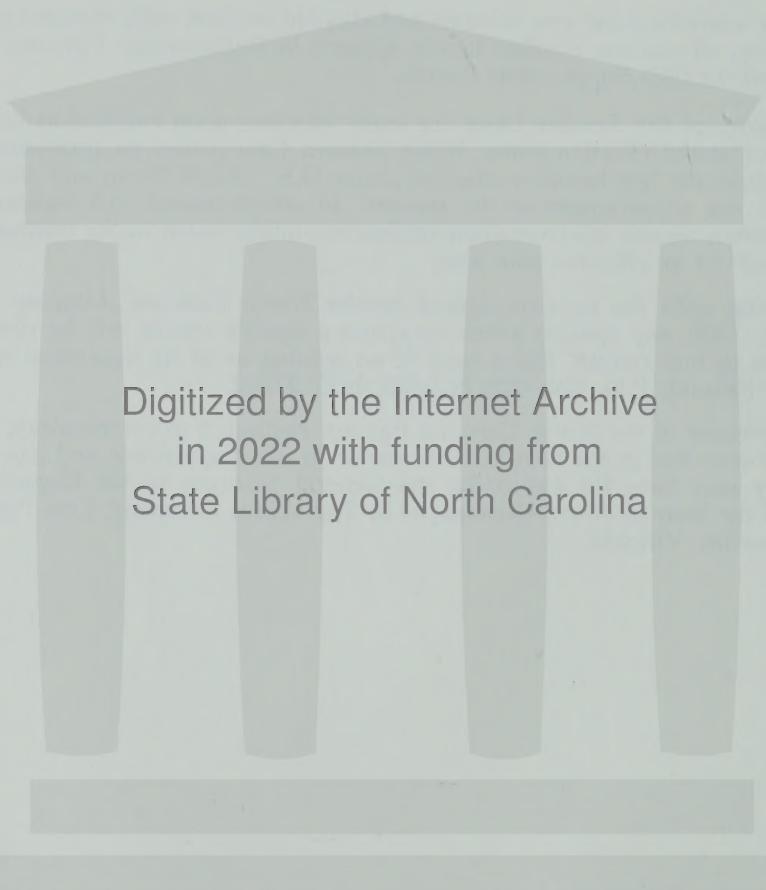
Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1973 Supplements thereto.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1973 Session of the General Assembly affecting Chapters 137 through 156 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 279 (p. 192)-283 (p. 588).

North Carolina Court of Appeals Reports volumes 11 (p. 597)-18 (p. 351).

Federal Reporter 2nd Series volumes 443 (p. 1217)-476 (p. 656).

Federal Supplement volumes 328 (p. 225)-356.

United States Reports volumes 403 (p. 443)-411 (p. 525).

Supreme Court Reporter volumes 91 (p. 1977)-93 (p. 2788).

North Carolina Law Review volume 49 (pp. 592-1006).

Opinions of the Attorney General.

The General Statutes of North Carolina

1973 Interim Supplement

VOLUME 3C

Chapter 138.

Salaries, Fees and Allowances.

§ 138-6. Travel allowances of State officers and employees.—(a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

- (1) For transportation by privately owned automobile, eleven cents (11¢) per mile of travel and the actual cost of tolls paid;
- (2) For bus, railroad, Pullman, or other conveyance, actual fare;
- (3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of nineteen dollars (\$19.00) per day when traveling in State or a total of twenty-five dollars (\$25.00) per day when traveling out of State;
- (4) For convention registration fees, not to exceed fifteen dollars (\$15.00) per convention.

(1973, c. 595, s. 1.)

Editor's Note.—

The 1973 amendment substituted "eleven cents (11¢)" for "ten cents (10¢)" in subdivision (1) and "nineteen dollars (\$19.00)" for "seventeen dollars and fifty cents

(\$17.50)" in subdivision (3) of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 138-7. Exceptions to §§ 138-5 and 138-6.—The Director of the Budget, with the approval of the Advisory Budget Commission, shall establish and publish uniform standards and criteria under which actual expenses in excess of the travel and subsistence allowances and convention registration fees as prescribed in G.S. 138-5 and 138-6, may be authorized for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business. No expenditures in excess of the maximum amounts set forth in G.S. 138-5 and 138-6 shall be reimbursed unless the head of the State department, agency or institution involved has secured the approval of the Director of the Budget prior to the making of such expenditures. (1961, c. 833, s. 6.1; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, s. 3; 1973, c. 595, s. 2.)

Editor's Note.—

The 1973 amendment substituted "the travel and subsistence allowances and convention registration fees as" for "the seventeen dollars and fifty cents (\$17.50) for in-

state travel, twenty-five dollars (\$25.00) for out-of-state travel, and the ten dollar (\$10.00) limit on convention registration" in the first sentence.

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

Sec.

139-7. District board of supervisors — appointive members; organization of board; certain powers and duties.

Sec.
139-6. District board of supervisors — elective members; certain duties.

ARTICLE 1.

General Provisions.

§ 139-6. District board of supervisors—elective members; certain duties.—After the issuance of the certificate of organization of the soil conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections. No absentee ballots shall be permitted in the election.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no later than 12:00 noon on the second Friday in September preceding the election. The candidate shall pay a filing fee of five dollars (\$5.00) at the time he files the notice of candidacy.

Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December, 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance

they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1.)

Editor's Note.—

The 1973 amendment rewrote this section.

§ 139-7. District board of supervisors—appointive members; organization of board; certain powers and duties.—The governing body of a soil conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the State Committee pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the elective supervisors of each county shall on or before December 31, 1974, and on or before December 31 as the terms of the appointive supervisors expire, recommend in writing two persons to the State Committee to be appointed to serve with the elective supervisors. If the names are not submitted to the State Committee as required, the State Committee shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The State Committee shall make its appointments prior to or at the January meeting of the State Committee. Appointive supervisors shall take office on the third Wednesday in January following their appointment. One appointive supervisor shall be appointed for a term of two years and one for a term of four years. Thereafter, as their terms expire, their successors shall be appointed for terms of four years. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the State Committee from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the State Committee of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the State Committee may, but is not required, to appoint one district supervisor without recommendation from the elective supervisors, to serve as a district supervisor along with the elected members of the board of supervisors. Such appointment shall be made at the same time other appointments are made under this section, and the person appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G. S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the State Committee.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the State Committee, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the State Soil Conservation Committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or em-

ploy, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the State Soil Conservation Committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, c. 481; 1947, c. 131, ss. 6, 7; 1957, c. 1374, s. 3; 1963, c. 563; 1973, c. 502, s. 2.)

Editor's Note.— The former first paragraph as the present first
The 1973 amendment rewrote the and second paragraphs.

ARTICLE 2.

Watershed Improvement Districts.

§ 139-18. Notice and hearing on petition; determination of need for district and defining boundaries.

(d) All owners of land lying within the boundaries of the proposed watershed improvement district, and only such owners, shall be eligible to register and vote in the referendum. The registration shall be conducted at one or more registration places within the proposed district, as established by the supervisors. The supervisors shall furnish a registration book for each registration place, and shall appoint for each registration place at least two registrars to register the voters. One or more supervisors may be assigned to perform the function of registrar. If the proposed district lies within more than one county, separate registration books shall be supplied and kept for each such county, regardless of the number of registration or voting places. Each registrar before entering upon the discharge of his duties shall take an oath before a magistrate or some other person authorized to administer oaths, that he will support the Constitution of the United States and the Constitution of North Carolina not inconsistent therewith and that he will honestly and impartially discharge his duties in registering the voters. The registration book shall be opened for the registration of voters at nine o'clock A.M. on the second Saturday before the referendum, and closed at sunset on the Saturday before the election. On each such Saturday, the registrars shall attend their respective registration places and keep open the registration books between the hours nine o'clock a.m. and sunset for the registration of voters. If any person shall give satisfactory evidence to the registrars that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date and his name shall be inserted in the registration book, except that no registration shall be allowed on the day of the referendum.

(1973, c. 108, s. 86.)

Editor's Note.—

The 1973 amendment substituted "magistrate" for "justice of the peace" in the sixth sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 139-21. Board of trustees; selection and tenure.

(e) Members elected to the board of trustees shall qualify and enter upon the duties of their offices on the first Monday of December next succeeding their election. Appointed members shall qualify and enter upon the duties of the offices not later than the second Monday next succeeding their appointment. All members shall take the oath of office prescribed by the State Constitution before the clerk of the superior court, or some judge, or magistrate or other person qualified by law to administer oaths.

(1973, c. 108, s. 87.)

Editor's Note.—

The 1973 amendment substituted "magistrate" for "justice of the peace" in the third sentence of subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 139-37. Participation by cities, counties, industries and others.

(b) Any county or municipality may contribute funds toward the construction, maintenance and operation of watershed improvement district works or projects, to the extent that such works or projects:

- (1) Provide a source (respectively) of county or municipal water supply; or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity; or
- (2) Protect against or alleviate the effects of flood-water or sediment damages affecting, or provide drainage benefits for, (respectively) county or municipally owned property or the property (respectively) of county or municipal inhabitants located outside the boundaries of such district but within the respective boundaries of such county or municipality.

Each county and city may fund appropriations for the purposes of this section by levy of property taxes pursuant to G.S. 153-65 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1959, c. 781, s. 8; 1973, c. 803, s. 33.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote the last paragraph of subsection (b). As subsection (a) was not changed by the amendment, it is not set out.

ARTICLE 3.*Watershed Improvement Programs; Expenditure by Counties.***§ 139-39. Alternative method of financing watershed improvement programs by special county tax.**

Local Modification. — Camden: 1973, c. 387.

§ 139-40. Conduct of election.

Local Modification. — Camden: 1973, c. 387.

§ 139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization. —(a) As used in this section :

- (1) The term "channelization" means channel excavation but does not include channel clearing and snagging work. Determinations by the Board of Water and Air Resources that a project involves channelization shall be conclusive for purposes of this section.
- (2) The term "channel excavation" means the construction or enlargement of a channel by the removal and disposal of material by excavation to facilitate runoff of floodwater or drainage of water.

(3) "Channel clearing and snagging" means the removal and disposal of trees, snags, drifts, boulders or other obstructions from the flow area of a natural or excavated channel.

(b) A notice of public hearing for every preliminary project investigation of the Soil Conservation Service or recommended report of the Army Corps of Engineers or any project planning report of the Tennessee Valley Authority concerning a watershed improvement project or drainage project that involves channelization shall be published in a newspaper of general circulation in the county or counties wherein any part of the project lies at least one time, not less than two weeks nor more than four weeks prior to the date of the public hearing. The notice shall include a map of the project, not less than one-fourth page in size, delineating the boundaries of the project and indicating the proposed works of improvement, including any channelization features.

(c) Following publication of the notice, the Board of Water and Air Resources (or its designee pursuant to G.S. 143-215.3(a)(4)) shall hold a public hearing in the county or counties wherein any part of the project lies to allow interested parties to be heard concerning the proposed project. The hearing shall be held pursuant to the provisions of G.S. 143-215.4(d), except that notice of the hearing shall be given as required by subsection (b) of this section. The decision of the Board shall be subject to judicial review pursuant to G.S. 143-215.5.

(d) Every preliminary project investigation or recommended report concerning a watershed improvement project or drainage project that involves channelization shall be submitted to the Board of Water and Air Resources for review and for approval or disapproval. Such review shall be prior to, and in addition to, the review of watershed work plans provided for by G.S. 139-35. The Board shall approve such investigation or report, following the public hearing held pursuant to subsection (c) of this section, if, in its judgment, the investigation or report shows that any channelization features of the proposed project are necessary to the project and that no other feasible alternatives are available. No work of improvement may be constructed or established without the approval of the preliminary project investigation or recommended report by the Board pursuant to this section. The construction or establishment of any such work of improvement without such approval, or without conforming to a preliminary project investigation or recommended report approved by the Board, may be enjoined. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina Department of Human Resources and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through 130-209. The Board may institute an action for injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in such action shall be as provided in Article 37, Chapter 1 of the General Statutes. (1971, c. 1138, s. 3; 1973, c. 476, s. 128.)

Editor's Note.— "Resources" for "State Board of Health" in subsection (d).
The 1973 amendment, effective July 1, 1973, substituted "Department of Human

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1.

North Carolina Museum of Art.

Sec.

140-2. Powers and duties of Art Commission.

140-3. Powers and duties of Director of Museum of Art.

Article 1A.

State Art Museum Building Commission.

140-5.2. [Repealed.]

Article 2.

State Symphony Society.

Sec.

140-6. [Repealed.]

Article 3.

State Art Society.

140-11. [Repealed.]

ARTICLE 1.

North Carolina Museum of Art.

§ 140-1. Agency of State; functions.

Cross Reference.—As to the Art Commission, see §§ 143B-54 through 143B-57.

§ 140-2. Powers and duties of Art Commission.—(a) to (c) Repealed by Session Laws 1973, c. 476, ss. 38, 84, effective July 1, 1973.

(d) The Art Commission shall have the following powers and duties:

- (1) To adopt bylaws for its own government.
- (2) To adopt policies, rules, and regulations for the conduct of the North Carolina Museum of Art.
- (3) to (6) Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973.
- (7) On behalf and in the name of the North Carolina Museum of Art, to acquire by gift or will, absolutely or in trust, from individuals, corporations, the federal government, or from any other source, money or other property which may be retained, sold, or otherwise used to promote the purposes of the North Carolina Museum of Art. The net proceeds of the sale of all property acquired under the provisions of this paragraph shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund."
- (8) To exchange works of art owned by the North Carolina Museum of Art for other works of art which, in the opinion of the Department of Cultural Resources, would improve the quality, value, or representative character of the art collection of the Museum.
- (9) To sell any work of art owned by the North Carolina Museum of Art if the Department of Cultural Resources finds that it is in the best interest of the Museum to do so, unless such sale would be contrary to the terms of acquisition. The net proceeds of each such sale, after deduction of the expenses attributable to that sale, shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund," and shall be used only for the purchase of other works of art. No work of art owned by the North Carolina Museum of Art may be pledged or mortgaged.
- (10) Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973. (1961, c. 731; 1973, c. 476, ss. 38, 84.)

Editor's Note. — The 1973 amendment, (a) through (c), relating to the appointment and organization of the board of

trustees of the North Carolina Museum of Art, substituted "Art Commission" for "board of trustees shall be the governing body of the North Carolina Museum of Art, and" in the introductory paragraph of subsection (d), repealed subdivisions (3)

through (6) and (10) of subsection (d), relating to certain powers of the board of trustees of the Museum of Art, and substituted "Department of Cultural Resources" for "board of trustees" in subdivisions (8) and (9) of subsection (d).

§ 140-3. Powers and duties of Director of Museum of Art.—(a), (b)
Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973.

(c) The Director shall have the following powers and duties:

- (1) To direct and administer the North Carolina Museum of Art in accordance with the rules and regulations adopted by the Art Commission.
- (2) Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973.
- (3) To serve as secretary to the Art Commission.
- (4) To serve as director of collections of the Museum. (1961, c. 731; 1973, c. 476, s. 38.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, repealed subsections (a) and (b), relating to the election, tenure and salary of the Director of the Museum of Art, and subsection (c)(2), relating to employment of persons to perform the functions of the Museum, deleted

"Under the supervision of the board of trustees" at the beginning, and "policies" preceding "rules" near the middle, of subdivision (c)(1), and substituted "Art Commission" for "board of trustees" in subdivisions (c)(1) and (c)(3).

ARTICLE 1A.

State Art Museum Building Commission.

§ 140-5.2: Repealed by Session Laws 1973, c. 476, s. 43, effective July 1, 1973.

Cross Reference.—For present provisions as to creation and organization of the Art Museum Building Commission, see §§ 143B-58 through 143B-61.

ARTICLE 2.

State Symphony Society.

§ 140-6: Repealed by Session Laws 1973, c. 476, s. 89, effective July 1, 1973.

Cross Reference. — For present provisions as to the organization of the North Carolina Symphony Society, Inc., see § 143B-94.

ARTICLE 3.

State Art Society.

§ 140-11: Repealed by Session Laws 1973, c. 476, s. 81, effective July 1, 1973.

Cross Reference.—As to the organization of the North Carolina Art Society, see § 143B-89.

Chapter 140A.

State Awards System.

Sec.

140A-4. [Repealed.]

§ 140A-1. Annual awards established; form and design.

Cross Reference.—As to the North Carolina Awards Committee, see §§ 143B-83, 143B-84.

§ 140A-4: Repealed by Session Laws 1973, c. 476, s. 73, effective July 1, 1973.

§ 140A-5. Selection of recipients for awards.—The recipients of the awards shall be chosen by a committee named by the North Carolina Awards Committee, for each category of achievement, but no award shall be made in any field unless the committee of awards deems the recognized accomplishment to be outstanding in merit, value, and distinction. (1961, c. 1143, s. 5; 1973, c. 476, s. 73.)

Editor's Note. — The 1973 amendment, "Carolina Awards Committee" for "North effective July 1, 1973, substituted "North Carolina Awards Commission."

Chapter 142.**State Debt.**

ARTICLE 5.

Sinking Funds for Highway Bonds.

§ 142-46. Source of funds.—All of the highway bond sinking fund payments to be made under G.S. 142-44 and 142-45, aggregating five hundred thousand dollars (\$500,000) annually, shall be made from the revenues collected under the provisions of said Chapter two, Public Laws of 1921, if such revenues are sufficient therefor after setting aside therefrom the moneys provided by said Chapter two for the maintenance of the Board of Transportation and the expenses of collecting highway revenues, and after setting aside moneys necessary for the payment of maturing principal of and interest upon highway bonds of the State: provided, however, that no holder of any highway bonds of the State shall be prejudiced by this amendment or by any act amendatory of this section passed subsequent to the issuance of such bonds, and any such bondholder shall be entitled to all rights to which he would be entitled if no such amendment had been made. (1923, c. 188, s. 4; C. S., s. 7472(u); 1925, c. 45, s. 4; c. 133, s. 4; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

Chapter 143.

State Departments, Institutions, and Commissions.

Article 3.

Purchases and Contracts.

Sec.

143-49.1. Purchases by volunteer nonprofit fire department and lifesaving and rescue squad.
 143-63.1. Sale, disposal and destruction of firearms.

Article 7.

Inmates of State Institutions to Pay Costs.

143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.

Article 8.

Public Building Contracts.

143-134. Applicable to Board of Transportation and Department of Correction; exceptions.
 143-135. Limitation of application of Article.

Article 12A.

Law-Enforcement Officers', Firemen's and Rescue Squad Workers' Death Benefit Act.

Article 19.

Roanoke Island Historical Association.

143-204. Authorized allotment from Contingency and Emergency Fund.

Article 19A.

Governor Richard Caswell Memorial Commission.

143-204.1 to 143-204.4. [Repealed.]

Article 19B.

Historic Swansboro Commission.

143-204.5 to 143-204.7. [Repealed.]

Article 21.

Department of Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.
 143-214.2. Prohibited discharges.
 143-215. Effluent standards and limitations.
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 143-215.2. Special orders.
 143-215.4. General provisions as to procedure; seal; hearing officer.
 143-215.6. Enforcement procedures.

Sec.

143-215.8. [Repealed.]

143-215.8A. Planning.

Part 2. Regulation of Use of Water Resources.

143-215.13. Declaration of capacity-use areas.
 143-215.15. Permits for water use within capacity-use areas — procedures.

Part 7. Water and Air Quality Reporting. 143-215.70 to 143-215.74. [Reserved.]

Article 21A.

Oil Pollution Control.

Part 1. General Provisions.

143-215.75. Title.
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 143-215.81. Authority supplemental.
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Part 2. Oil Discharge Controls.

143-215.83. Discharges.
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 143-215.90. Liability for damage to public resources.
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Part 3. Oil Terminal Facilities.

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- 143-363 to 143-365. [Repealed.]

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- 143-369.1 to 143-369.3. [Repealed.]

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- 143-396 to 143-399. [Repealed.]

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ARTICLE 1.***Executive Budget Act.***

§ 143-4. Advisory Budget Commission.—The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, two other Senators appointed by the President of the Senate, two other Representatives appointed by the Speaker of the House, and four other persons appointed by the Governor shall constitute the Advisory Budget Commission.

The members of the Advisory Budget Commission shall receive as full compensation for their services ten dollars (\$10.00) per day for each day which they shall serve and their expenses. The Advisory Budget Commission shall be called in conference in January and July of each year, upon 10 days' notice by the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

A vacancy in a seat on the Commission filled by the chairman of a finance or

an appropriations committee shall be filled by appointment by the officer who appointed the chairman causing the vacancy. A vacancy in one of the other seats on the Commission shall be filled by appointment by the officer who appointed the person causing the vacancy.

The Advisory Budget Commission alone shall be responsible for recommending to the General Assembly proposed biennial budgets for the requirements of the State Auditor and the State Treasurer, and for such purposes the Advisory Budget Commission shall require the State Auditor and State Treasurer to maintain records and to submit budget requests and periodic reports on their respective departments in the same manner and form as do other State agencies, and may further direct that such requests and reports be filed for safekeeping in the office of the Department of Administration.

Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a competent certified public accountant who is in no way otherwise affiliated with the State or with any agency thereof to conduct a thorough and complete audit of the receipts and expenditures of the State Auditor's office during the immediate fiscal year just ended, and to report to the Advisory Budget Commission on such audit not later than the following October first. A sufficient number of copies of such audit shall be provided so that at least one copy is filed with the Governor's Office, one copy with the Department of Administration and at least two copies filed with the Secretary of State.

In all matters where action on the part of the Advisory Budget Commission is required by this Article, eight members of the Commission shall constitute a quorum for performing the duties or acts required by the Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768; 1955, c. 578, s. 3; 1957, c. 269, s. 2; 1973, c. 820, ss. 1-3.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, rewrote the first and third paragraphs

and substituted "eight" for "four (4)" in the last paragraph.

§ 143-31.2. Appropriation, allotment, and expenditure of funds for historic and archeological property.

Editor's Note. — Session Laws 1973, c. 476, s. 48, effective July 1, 1973, substitutes "Department of Cultural Resources" for "Department of Archives and History" and

"North Carolina Historical Commission" for "Historic Sites Advisory Committee" throughout the General Statutes.

ARTICLE 3.

Purchases and Contracts.

§ 143-49.1. Purchases by volunteer nonprofit fire department and lifesaving and rescue squad.—In consideration of public service, any volunteer nonprofit fire department, lifesaving and rescue squad in this State is hereby authorized to purchase gas, oil, and tires for their official vehicles under State contract through the Department of Administration, and to purchase surplus property through the Department of Administration on the same basis applicable to counties and municipalities.

The Department of Administration shall make its services available to these organizations in the purchase of such supplies under the same laws, rules and regulations applicable to nonprofit organizations as provided in G.S. 143-49. (1973, c. 442.)

§ 143-61. Standardization Committee.—It shall be the duty of the Governor to appoint a Standardization Committee to serve at the pleasure of the Governor and to consist of seven members as follows: the Director of Administration, who shall be chairman of said Committee; an engineer from the Board of Transportation to be appointed by the Governor upon the recommendation of the chairman

of the Board of Transportation; a representative of State or local educational agencies to be appointed by the Governor; a representative of the State departments to be appointed by the Governor; a representative of the State charitable and correctional institutions to be appointed by the Governor; and two members of the Advisory Budget Commission to be designated by the Governor. Four members of said Committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the Committee by this Article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the chairman. The Committee shall keep official minutes and such minutes shall be open to public inspection. It shall be the duty of the Standardization Committee to review, adopt, establish and/or modify standard specifications wherever feasible applying to articles purchased or leased. In the adoption or modification of any specifications, the Standardization Committee shall seek the advice, assistance and cooperation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall insofar as practicable satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption, each standard specification shall, until revised or rescinded, apply alike in terms and effect to every State purchase of the commodity described in such specifications: Provided, however, that interim modifications may be made by the Director of Administration between formally adopted revisions. In the preparation of specifications the Standardization Committee shall have power to make use of any State laboratory with or without charge for tests in making determination of quality. (1931, c. 261, s. 12; 1957, c. 65, s. 11; c. 269, s. 3; 1971, c. 587, s. 1; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, "Commission" in two places in the first sentence. effective July 1, 1973, substituted "Board" for "State Highway of Transportation" for "State Highway

§ 143-63.1. Sale, disposal and destruction of firearms.—(a) Except as hereinafter provided, it shall be unlawful for any employee, officer or official of the State in the exercise of his official duty to sell or otherwise dispose of any pistol, revolver, shotgun or rifle to any person, firm, corporation, county or local governmental unit, law-enforcement agency, or other legal entity.

(b) It shall be lawful for the Purchase and Contract Division of the Department of Administration, in the exercise of its official duty, to sell any weapon described in subsection (a) hereof, to any county or local governmental unit law-enforcement agency in the State; provided, however, that such law-enforcement agency files a written statement, duly notarized, with the seller of said weapon certifying that such weapon is needed in law enforcement by such law-enforcement agency.

(c) All weapons described in subsection (a) hereof which are not sold as herein provided within one year of being declared surplus property shall be destroyed by the Purchase and Contract Division of the Department of Administration. (1973, c. 666, ss. 1-3.)

Editor's Note. — Session Laws 1973, c. 666, s. 4, makes the act effective 45 days after ratification. The act was ratified May 22, 1973.

Section 20-187.2(a) not affected. — See opinion of Attorney General to Mr. R. D. McMillan, Jr., State Purchasing Officer, 43 N.C.A.G. 58 (1973).

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-126. Death of inmate; lien on estate.

Editor's Note. — Session Laws 1973, c. 476, s. 133, effective July 1, 1973, amends this section by

substituting "Department of Human Resources" for "Board of Mental Health" and "Department" for "Board."

Priority of Funeral Expenses Limited to \$600.—See opinion of Attorney General to Elminda S. Yates, 42 N.C.A.G. 262 (1973).

Priority of Widow's and Child's Al-

**§ 143-126.1. Lien on patient's property for unpaid balance due in-
stitution.**

Editor's Note. — Session Laws 1973, c. 476, s. 133, effective July 1, 1973, amends this section by substituting "Department of

lowances.—See opinion of Attorney General to Elminda S. Yates, 42 N.C.A.G. 263 (1973).

"Human Resources" for "Board of Mental Health" and "Department" for "Board."

§ 143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.—(a) Notwithstanding the foregoing provisions of G.S. 143-117 through G.S. 143-127 inclusive, the natural or adoptive parents of persons who are long-term patients at facilities owned or operated by the Department of Human Resources shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the Department of Human Resources.

(b) Parents or adoptive parents of a long-term patient in a facility owned or operated by the Department of Human Resources shall not be liable for any charges made by such facility for treatment, care and maintenance of such a patient incurred or accrued subsequent to such patient attaining age 18.

(c) For purposes of this section, the term "long-term patient" is defined as a person who has been a patient in a facility owned or operated by the Department of Human Resources for a continuous period in excess of 120 days. No absence of a patient from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the 120 days herein required to attain the status on [of] a long-term patient. (1971, ch. 218, s. 1; 1973, c. 476, s. 133; c. 775.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Department of Mental Health."

The second 1973 amendment substituted "18" for "21" at the end of subsection (b). The amendment also substituted "on" for

"of" following "status" near the end of subsection (c).

Applicability of Section to Accounts Past Due; Liability of Patient Not Restricted.—See opinion of Attorney General to Mr. Ben W. Aiken, N.C. Department of Mental Health, 41 N.C.A.G. 507 (1971).

ARTICLE 8.

Public Building Contracts.

**§ 143-128. Separate specifications for building contracts; responsi-
ble contractors.**

Cross Reference. — As to application of this Article to lease of personal property with an option to purchase by a county, see § 153A-165.

Separate Specifications Required for Electrical, Plumbing and Heating Facilities.—A county or city may not let a bid for a contract for public building of modu-

lar unit type which has factory installed electrical, plumbing and heating facilities without having separate specifications drawn for such facilities so as to permit separate and independent bids on each class of work. Opinion of Attorney General to Mr. W.I. Thornton, Jr., 42 N.C.A.G. 129 (1972).

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

Local Modification. — City of Durham: 1973, c. 431.

County May Accept Single Bid Filed Pursuant to Requirement of Statute.—See

opinion of Attorney General to Mr. Elbert L. Peters, Governor's Highway Safety Program, 41 N.C.A.G. 527 (1971).

Necessity of Counties to Comply with

Competitive Bidding Requirements in Lease Agreement of Equipment with Option to Purchase.—See opinion of Attorney

General to Senator John J. Burney, Jr., 41 N.C.A.G. 504 (1971).

§ 143-134. Applicable to Board of Transportation and Department of Correction; exceptions.—This article shall apply to the Board of Transportation and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Board of Transportation or by the Department of Correction can be done more economically through use of employees of the Board of Transportation and/or prison inmates than by letting such repair or building construction to contract, the provisions of this Article shall not apply to such repair or construction. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11; 1967, c. 860; c. 996, s. 13; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in three places.

§ 143-135. Limitation of application of Article.

Local Modification.—City of Charlotte: 1973, c. 563; Mecklenburg: 1973, c. 563.

§ 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.

Recovery of Settlement Limited to Terms of Contract.—Under the provisions of this section a party is only entitled to recover such settlement as he claims to be entitled to under terms of his contract. *Nat Harrison Associates v. North Carolina State Ports Authority*, 280 N.C. 251, 185 S.E.2d 793 (1972).

And Failure to Complete Obligation under Contract Terms Prohibits Relief.—Failure by a party to complete its obligation under the terms of its contracts prohibits that party from seeking the relief provided under this section. *Nat Harrison Associates v. North Carolina State Ports Authority*, 280 N.C. 251, 185 S.E.2d 793 (1972).

Dismissal of Contract Action.—A contract action against the State Ports Authority should have been dismissed where plaintiff had not completed a material part

of its contract and had failed to comply with a contract requirement prior to filing a claim with the Director of the Department of Administration and instituting the action in superior court. *Nat Harrison Associates v. North Carolina State Ports Authority*, 280 N.C. 251, 185 S.E.2d 793 (1972).

Summary Judgment in Favor of Ports Authority Proper. — Summary judgment was properly allowed in favor of the Ports Authority as to counts in which a plaintiff sought to recover for losses where there was no provision in the contracts for recovery of the claimed damages, since the plaintiff was entitled to recover under this section only under the terms of his contract. *Nat Harrison Associates v. North Carolina State Ports Authority*, 280 N.C. 251, 185 S.E.2d 793 (1972).

ARTICLE 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership.

Independent Judgment by Inspector in Interpretations Renders Section Useless.—If an inspector has the right under the Code to base his interpretations on independent judgment, this section, authorizing and establishing a Building Code Council empowered and directed to prepare and adopt a North Carolina State Building Code in accordance with legislative directives contained in this Article, is a completely useless piece of legislation. *Lind-*

strom v. Chesnutt, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

Violation of Building Code as to Materials or Type of Construction.—This section does not allow the building inspector to permit violations of the Building Code where the Code is specific as to the materials or type of construction required. *Lindstrom v. Chesnutt*, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

§ 143-138. North Carolina State Building Code.

(b) Contents of the Code.—The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; regulations governing construction and precautions to be taken during construction; regulations as to permissible materials, loads, and stresses; regulations of chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; regulations governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules and regulations pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building regulations applicable to farm buildings located outside the building-regulation jurisdiction of any municipality.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars (\$20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

- (1) Any boiler regulations adopted by the Board of Boiler Rules,
- (2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and
- (3) Any regulations relating to sanitation adopted by the Department of Human Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(g) Publication and Distribution of Code.—The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council).

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	3
State Board of Education	2
Attorney General	5
Commissioner of Agriculture	1
Commissioner of Labor	3
Commissioner of Insurance	5
Department of Human Resources [Commission for Health Services]	10
Department of Human Resources [Commission for Medical Facility Services and Licensure]	3
Board of Transportation	3
Adjutant General	1
Utilities Commission	1
Department of Administration	3
Department of Conservation and Development	3
Department of Human Resources [Social Services Commission]	7
Justices of the Supreme Court	1 each
Clerk of the Supreme Court	1
Judges of the Court of Appeals	1 each
Clerk of the Court of Appeals	1
Judges of the Superior Court	* 1 each
Emergency Judges of the Superior Court	* 1 each
Special Judges of the Superior Court	* 1 each
Solicitors of the Superior Court	* 1 each
Department of Cultural Resources [State Library]	2
Supreme Court Library	2
State Senators	* 1 each
Representatives of General Assembly	* 1 each
Other state-supported institutions, at the discretion of the Council	* 1 each
Schools	
University of North Carolina at Chapel Hill	*25
North Carolina State University at Raleigh	*15
North Carolina Agricultural and Technical State University ..	* 5
All other state-supported colleges and universities in the State of North Carolina	* 1 each
Local Officials	
Clerks of the Superior Courts	1 each
Registers of Deeds of the Counties	* 1 each
Chairmen of the Boards of County Commissioners	* 1 each
City Clerk of each incorporated municipality	1 each
Chief Building Inspector of each incorporated municipality or county	* 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health" in subsections (b) and (g) and for "Medical Care Commission," and "State Board of Public Welfare" in subsection (g) and substituted "Department of Cultural Resources" for "State Library" in subsection (g). Names of constituent agencies of the Departments of Human Resources and Cultural Resources have been inserted in brackets in subsection (g) by the codifiers.

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in subsection (g).

As the rest of the section was not changed by the amendments, only subsections (b) and (g) are set out.

Building Code Has Force, etc.—

In accord with 1st paragraph of original. See *Lindstrom v. Chesnutt*, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

A violation of the Building Code is negligence per se. *Lindstrom v. Chesnutt*, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

Violation of Building Code as to Materials or Type of Construction.—This section does not allow the building inspector to permit violations of the Building Code where the Code is specific as to the materials or type of construction required. *Lindstrom v. Chesnutt*, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

National Electrical Code Has Force, etc.—

The National Electrical Code, as approved and adopted by the State Building Code Council and on file with the Secretary of State, has the force and effect of law. *Jenkins v. Starrett Corp.*, 13 N.C. App. 437, 186 S.E.2d 198 (1972).

And Violation, etc.—

In accord with 1st paragraph in original. See *Jenkins v. Starrett Corp.*, 13 N.C. App. 437, 186 S.E.2d 198 (1972).

But Neither Code Precisely Defines Class of Persons to Which Applicable.—Neither the State Building Code nor the National Electrical Code precisely defines the class of persons to which they are applicable. *Jenkins v. Starrett Corp.*, 13 N.C. App. 437, 186 S.E.2d 198 (1972).

National Electrical Code Not Restricted to Fixtures to Real Property.—The State Building Code does not restrict the application of the National Electrical Code to fixtures to real property. *Jenkins v. Starrett Corp.*, 13 N.C. App. 437, 186 S.E.2d 198 (1972).

Applicability of Grounding Provisions of National Electrical Code.—The provisions of the National Electrical Code relating to equipment grounding were held applicable to the owner of an outdoor ice merchandiser installed to sell ice to the public. *Jenkins v. Starrett Corp.*, 13 N.C. App. 437, 186 S.E.2d 198 (1972).

ARTICLE 12.*Law-Enforcement Officers' Benefit and Retirement Fund.***§ 143-166. Law-Enforcement Officers' Benefit and Retirement Fund.**

Editor's Note.—Session Laws 1973, c. 572, contains provisions as to the transfer of law-enforcement officers who are members of the Teachers' and State Employees'

Retirement System or the Local Governmental Employees' Retirement System to the Law-Enforcement Officers' Benefit and Retirement Fund.

ARTICLE 12A.*Law-Enforcement Officers', Firemen's and Rescue Squad Workers' Death Benefit Act.*

§ 143-166.1. Purpose.—In consideration of hazardous public service rendered to the people of this State, there is hereby provided a system of benefits for dependents of law-enforcement officers, firemen, and rescue squad workers killed in the discharge of their official duties. (1959, c. 1323, s. 1; 1965, c. 937; 1973, c. 634, s. 2.)

Cross References.—See also Chapter 118A, the Firemen's Death Benefit Act

and Chapter 118B, the Members of a Rescue Squad Death Benefit Act.

Editor's Note.—

The 1973 amendment inserted "people of this," deleted "by law-enforcement officers" following "State," and substituted

"of law-enforcement officers, firemen, and rescue squad workers" for "who are closely related to such officers as may be."

§ 143-166.2. Definitions.—The following words and phrases, when used in this Article, shall have the meanings assigned to them by this section unless the context clearly indicated another meaning:

- (1) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, or rescue squad worker, whether natural, adopted, posthumously born or whether an illegitimate child as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's death as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's or the rescue squad worker's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.
- (2) The term "dependent parent" shall mean the parent of the deceased officer, fireman, or rescue squad worker, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer, fireman, or rescue squad worker at the time of the injury which resulted in his death;
- (3) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, or rescue squad worker who is killed or died as a result of injuries received while in the discharge of his official duty or duties.
- (4) The term "law-enforcement officer," "officer," or "fireman" shall mean all law-enforcement officers employed full-time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Corrections. The term "fireman" shall mean "eligible fireman" or "fireman" as defined in G.S. 118-23. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care of emergency medical services and who belongs to an organized rescue squad.
- (5) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, or rescue squad worker who survives him and who was residing with such officer, fireman, or rescue squad worker at the time of and during the six months next preceding the date of injury to such officer, fireman, or rescue squad worker which resulted in his death and who also resided with such officer, fireman, or rescue squad worker from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, or rescue squad worker for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, or rescue squad worker was absent

during this six-month period due to service in the armed forces of this country. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2.)

Editor's Note.—

The 1973 amendment rewrote this section.

§ 143-166.3. Payments; determination.—(a) When any law-enforcement officer, fireman, or rescue squad worker shall be killed in the line of duty, the Industrial Commission shall award a death benefit to be paid in the amounts set forth in subsection (b) to the following:

- (1) The spouse of such officer, fireman, or rescue squad worker if there be a surviving spouse; or
- (2) If there be no spouse qualifying under the provisions of this Article, then payments shall be made to any surviving dependent child of such officer, fireman, or rescue squad worker; and if there be more than one surviving dependent child, then said payment shall be made to and equally divided among all surviving dependent children; or
- (3) If there be no spouse and no dependent child or children qualifying under the provisions of this Article, then payments shall be made to the surviving dependent parent of such officer, fireman, or rescue squad worker; and if there be more than one surviving dependent parent then said payments shall be made to and equally divided between the surviving dependent parents of said officer, fireman, or rescue squad worker.

(b) Payment shall be made to the person or persons qualifying therefor under subsection (a) in the following amounts:

- (1) At the time of the death of an officer, fireman, or rescue squad worker, ten thousand dollars (\$10,000) shall be paid to the person or persons entitled thereto;
- (2) Thereafter, five thousand dollars (\$5,000) shall be paid annually to the person or persons entitled thereto until the sum of the initial payment and each annual payment reaches twenty-five thousand dollars (\$25,000).
- (3) In the event there is no person qualifying under subsection (a) of this section, twenty-five thousand dollars (\$25,000) shall be paid to the estate of the deceased officer, fireman, or rescue squad worker at the time of death.

(c) In the event that any person or persons eligible for payments under subsection (a) of this section shall become ineligible, and other eligible person or persons qualify for said death benefit payments under subsection (a), then they shall receive the remainder of any payments up to the limit of twenty-five thousand dollars (\$25,000) in the manner set forth in subsection (b) of this section.

(d) In the event any person or persons eligible for payments under subsection (a) of this section shall become ineligible and no other person or persons qualify for payments under that subsection and where the sum of the initial payment of ten thousand dollars (\$10,000) and each subsequent annual payment of five thousand dollars (\$5,000) does not total twenty-five thousand dollars (\$25,000), then the difference between the total of the payments made and twenty-five thousand dollars (\$25,000) shall immediately be payable to the estate of the deceased officer, fireman, or rescue squad worker. (1959, c. 1323, s. 1; 1965, c. 937; 1971, c. 960; 1973, c. 634, s. 2.)

Editor's Note.—

The 1973 amendment rewrote this section.

§ 143-166.7. Applicability of Article. — The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, or rescue squad worker killed in the line of duty on or after May 22, 1973. (1965, c. 937; 1973, c. 634, s. 3.)

Editor's Note. — The 1973 amendment re-wrote this section, inserting the references to firemen and rescue squad workers and

changing the date at the end of the section from January 1, 1964, to May 22, 1973, and making other changes.

ARTICLE 18.

Rules and Regulations Filed with Secretary of State.

§ 143-195. Certain State agencies to file administrative regulations or rules of practice with Secretary of State; rate, service or tariff schedules, etc., excepted.

Cited in State v. Hosick, 12 N.C. App. 74, 182 S.E.2d 596 (1971).

§ 143-196. Rules and regulations effective only after filing; date of filing to be shown.

Cited in Marks v. Thompson, 282 N.C. 174, 192 S.E.2d 311 (1972).

§ 143-198.1. State agencies and boards to file copy of certain administrative rules with clerks of superior courts; clerks to file as official records.

Cited in State v. Hosick, 12 N.C. App. 74, 182 S.E.2d 596 (1971).

ARTICLE 19.

Roanoke Island Historical Association.

§ 143-200. Members of board of directors; terms; appointment.

Editor's Note. — Session Laws 1973, c. 476, s. 48, effective July 1, 1973, substitutes "Secretary of Cultural Resources" for "Director of the Department of Archives and History" throughout the General Statutes.

§ 143-201. Bylaws; officers of board. — The said board of directors when organized under the terms of this Article shall have authority to adopt bylaws for the organization and said bylaws shall thereafter be subject to change only by three-fifths vote of a quorum of said board of directors; the board of directors shall choose from its membership or from the membership of the Association a chairman, a vice-chairman, a secretary and a treasurer, which offices in the discretion of the board may be combined in one, and also a historian and a general counsel. The board also in its discretion may choose one or more honorary vice-chairmen. The duly elected officers of the Association shall serve as an advisory committee to the Secretary of Cultural Resources concerning matters relating to "The Lost Colony" historical drama. (1945, c. 953, s. 3; 1973, c. 476, s. 87.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added the last sentence.

§ 143-204. Authorized allotment from Contingency and Emergency Fund. — The Governor and Council of State, in the event State aid is reasonably necessary for the restoration and production of the pageant known and designated as "The Lost Colony," are authorized and empowered to allot a sum not exceeding ten thousand dollars (\$10,000) a year from the Contingency and Emergency Fund to aid in the restoration and production of said pageant, such allotment, however, to be made only upon evidence submitted to the Governor and Council

of State by the Secretary of Cultural Resources that during the immediately preceding season of production because of inclement weather or other circumstances or factors beyond the control of the Association, the said "Lost Colony" was operated at a deficit. (1945, c. 953, s. 6; 1973, c. 476, s. 87.)

Editor's Note. — The 1973 amendment, "Secretary of Cultural Resources" for "Association," effective July 1, 1973, substituted "Secretary" near the end of the section.

ARTICLE 19A.

Governor Richard Caswell Memorial Commission.

§§ 143-204.1 to 143-204.4: Repealed by Session Laws 1973, c. 476, s. 116, effective July 1, 1973.

ARTICLE 19B.

Historic Swansboro Commission.

§§ 143-204.5 to 143-204.7: Repealed by Session Laws 1973, c. 476, s. 116, effective July 1, 1973.

ARTICLE 21.

Department of Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

Editor's Note. —

For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971). For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-212. Department of Water and Air Resources created.

Editor's Note. —

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-213. Definitions. — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

- (10) The term "disposal system" means a system for disposing of waste, and including sewer systems and treatment works.
- (13) The term "outlet" means the terminus of a sewer system, or the point of emergence of any waste or the effluent therefrom, into the waters of the State.
- (15) The term "sewer system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting wastes to a point of ultimate disposal.
- (17) The term "treatment works" means any plant, septic tank disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfill, or other works not specifically mentioned herein, installed for the purpose of treating, equalizing, neutralizing, stabilizing or disposing of waste.
- (18) "Waste" shall mean and include the following:
 - a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of

such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

- b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.
- c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, and all other substances, except industrial waste and sewage, which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.
- d. "Toxic waste" means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring.

(19) The term "water pollution" means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the waters of the State, including, but specifically not limited to, alterations resulting from the concentration or increase of natural pollutants caused by man-related activities.

(22) The term "complex sources" means any facility which is or may be an air pollution source or which will induce or tend to induce development or activities which will or may be air pollution sources, and which shall include, but not be limited to, shopping centers; sports complexes; drive-in theaters; parking lots and garages; residential, commercial, industrial or institutional developments; amusement parks and recreation areas; highways; and any other facilities which will result in increased emissions from motor vehicles or stationary sources.

(23) The term "effluent standards" or "effluent limitations" means any restrictions established pursuant to this Article on quantities, rates, characteristics and concentrations of chemical, physical, biological and other constituents of wastes which are discharged from any pretreatment facility or from any outlet or point source to the waters of the State.

(24) The term "point source" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the waters of the State.

(25) The term "pretreatment facility" means any treatment works installed for the purpose of treating, equalizing, neutralizing or stabilizing waste from any source prior to discharge to any disposal system subject to effluent standards or limitations.

(26) The term "pretreatment standards" means effluent standards or limitations applicable to waste discharged from a pretreatment facility. (1951, c. 606; 1957, c. 1275, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 4; 1973, c. 821, ss. 1-3.)

Editor's Note.—

The 1973 amendment, effective Sept. 1, 1973, added paragraph d to subdivision (18), deleted "sewerage, industrial waste or

"other" preceding "waste" in subdivisions (10), (13) and (17) and preceding "wastes" in subdivision (15), inserted "septic tank" near the beginning, and "equalizing" near

the end, of subdivision (17), rewrote subdivision (19) and added subdivisions (22) through (26).

Only the subdivisions changed or added by the amendment are set out.

Session Laws 1973, c. 821, s. 7, contains a severability clause.

§ 143-214. Board of Water and Air Resources.—(a) Organization.—There is hereby created the North Carolina Board of Water and Air Resources, hereinafter referred to as "Board" which shall be charged with the duty of administering this Article. The Board shall consist of:

- (1) One licensed physician;
- (2) One who shall, at the time of appointment, be actively connected with the State or local board of health and have had experience in water and air pollution control activities;
- (3) One who shall, at the time of appointment, be actively connected with and have had experience in agriculture, provided that except for the connection with agriculture such member shall not be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;
- (4) One who shall, at the time of appointment, be a licensed engineer engaged in work connected with planning or conservation of water or air resources, or planning of water or sewer systems, or having experience in the field of industrial water supply or water and air pollution control, or have had practical experience in water supply and water and air pollution control problems of municipal government;
- (5) One who shall, at the time of appointment, be actively connected with and have had experience in the fish and wildlife activities of the State, provided that except for the connection with the fish and wildlife activities of the State, such member shall not be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;
- (6) One who shall, at the time of appointment, be knowledgeable in the groundwater industry, provided that such member shall not be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;
- (7) Five members interested in water and air pollution control, appointed from the public at large, provided that no such public member shall be an employee, officer or representative of any industry or political subdivision which may fall under the jurisdiction or be directly affected by the Board created by this section;
- (8) One who shall, at the time of appointment, be actively connected with industrial production and have had experience in the field of industrial air and water pollution control;
- (9) One who shall, at the time of appointment, be actively connected with and have had experience in pollution control problems of municipal or county government.

No person who receives, or during the previous two years has received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit shall be eligible to serve as a member of the Board. The Governor, by executive order, may promulgate criteria for determining the eligibility for persons under this provision, and for this purpose, may promulgate the rules, regulations or guidelines established by any federal agency interpreting and applying equivalent provisions of federal law.

The members shall serve staggered terms of office of six years. Each appointment shall be made by the Governor of North Carolina upon the expiration of the term of each member appointed pursuant to the provisions of G.S. 143-214(a) as amended by Chapter 892 of the Session Laws of 1967. The Governor shall have the powers to designate from the at-large members the member of the Board who shall serve as chairman thereof for such period as the Governor may fix. All members shall hold their offices until their successors are appointed and qualified. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time, remove any member of the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance or non-feasance in office. In each instance appointments to fill vacancies in the membership of the Board shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. Provided, however, appointments to fill vacancies in the membership of the Board which were appointed pursuant to G.S. 143-214(a) as amended by Chapter 892 of the Session Laws of 1967 shall be appointed to conform with the membership criteria in subdivisions (1) through (9) of this subsection (a).

The office of member of the North Carolina Board of Water and Air Resources is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9 of the North Carolina Constitution.

(1973, c. 698, s. 1.)

Editor's Note.—

The 1973 amendment added to subsection (a) the paragraph following subdivision (9).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143-214.1. Water; water quality standards and classifications; duties of Board.

Editor's Note.—

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-214.2. Prohibited discharges.—(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited.

(c) The discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited, except where such discharges are permitted pursuant to regulation duly adopted by the Board. (1973, c. 698, s. 2.)

Editor's Note.— Session Laws 1973, c. 698, s. 18, contains a severability clause.

§ 143-215. Effluent standards and limitations.—(a) The Board is authorized and directed to develop, adopt, modify and revoke effluent standards and limitations as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations may provide, without limitation, standards or limitations for any point source or sources; standards, limitations or prohibitions for toxic wastes or combinations of toxic wastes discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations.

(b) The effluent standards and limitations developed and adopted by the Board shall be promulgated in its official regulations as provided in G.S. 143-215.3(a)(1) and shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters concomitant with the public interest therein and the best use thereof; to preserve and protect the public health, safety and welfare; to promote propagation of and protect fish, shellfish and wildlife; to prevent damage to private and public property; and to preserve and enhance esthetic values. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4.)

Editor's Note.—

Session Laws 1973, c. 821, s. 7, contains

The 1973 amendment, effective Sept. 1, a severability clause.
1973, rewrote this section.

§ 143-215.1. Control of sources of water pollution; permits required.—(a) After the effective date of water quality standards and classifications established pursuant to G.S. 143-214.1 or effluent standards or limitations established pursuant to G.S. 143-215, no person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Board a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Make any outlets into the waters of the State;
- (2) Construct or operate any sewer system, treatment works, or disposal system within the State;
- (3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;
- (4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to an extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water, or to an extent beyond such minimum limits as the Board may prescribe, by way of general exemption from the provisions of this subdivision, by its official regulations;
- (5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;
- (6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Board under the provisions of this Article;
- (7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;
- (8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities.

In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Board shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste into waters classified as sources of public water supply, where the Department of Human Resources determines and advises the Board that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect thereon, until the Board has referred the complete plans and specifications to the Commission for Health Services and has received advice in writing that same are approved in accordance with the provisions of G.S. 130-161.

In any case where the Board denies a permit, it shall state in writing the reason for such denial and shall also state the Board's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(b) Board's Power as to Permits.—The Board shall act upon all applications for permits so as to effectuate the purpose of this section, by preventing, so far as reasonably possible, any pollution or any increased pollution of the waters of the State from any additional or enlarged sources.

The Board shall have the power:

- (1) To grant a permit with such conditions attached as the Board believes necessary to achieve the purposes of this section;
- (2) To grant any temporary permit for such period of time as the Board shall specify even though the action allowed by such permit may result in pollution or increased pollution where conditions make such temporary permit essential; and
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no condition shall be attached to the permit, except when the Board finds such denial or such conditions necessary to effectuate the purposes of this section.

(c) Applications for Permits and Renewals for Pretreatment Facilities and for Other Facilities Discharging to the Surface Waters.—

- (1) All applications for permits and for renewal of existing permits for pretreatment facilities, outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Board may prescribe the form of such applications. All applications shall be filed with the Board at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Board shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from the applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application. The Board may adopt such rules as it deems necessary, to be published as a part of its rules of procedure, with respect to the consideration of any application for permit or renewal and to the granting or denial thereof. Such rules may require the submission of plans and specifications and such other information as the Board deems necessary to the proper evaluation of the application.
- (2) The Board, pursuant to appropriate rules of procedure adopted by it, shall refer each application for permit, or renewal of an existing permit, for pretreatment facilities, outlets and point sources and treatment works and disposal systems discharging to the surface waters of

the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Board concurs in the proposed determination, it shall cause notice of the application and of the proposed determination, along with any other data that the Board may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Board, through its official rules, shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet or point source or treatment works or disposal system discharging to the surface waters of the State lies and by publication of the notice one time in a newspaper having general circulation within the county.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Board within 30 days following date of the notice of application. The Board shall consider all such requests for hearing, and if the Board determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of application was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Board shall also cause a copy of the notice thereof to be posted at the courthouse door of the county in which the pretreatment facility, outlet, point source, treatment works or disposal system lies, and shall cause the notice to be published at least one time in a newspaper having general circulation in such county. The Board, through its official rules, shall prescribe the form and content of the notices.

The Board shall adopt appropriate rules and regulations governing the procedures to be followed in such hearings. If the hearing is not conducted by the Board, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Board for its consideration prior to final action granting or denying the permit.

(4) Forty-five days following notice of application or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Board shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Board and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State.—All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Board shall act on all applications for permits as rapidly as possible, but it shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Board to take action on an application for a permit or renewal within 90 days after all data, plans, specifications and other required information have been furnished by the applicant, shall be treated as approval of such application. The Board shall adopt such rules

and regulations as it deems necessary, establishing the form of and procedures for processing applications, permits and renewals. Such regulations may require the submission of plans and specifications and other information as the Board deems necessary to the proper evaluation of an application. Permits and renewals issued in approving such facilities pursuant to this subsection (d) shall be effective until the date specified therein or until rescinded unless modified or revoked by the Board.

(e) Hearings and Appeals.—Any person whose application for a permit or renewal is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Board upon making demand therefor within 30 days following the giving of notice by the Board as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Board on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Board. (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" and "Commission for Health Services" for "State Board of Health" in the third paragraph of subsection (a) as it appeared before the second 1973 amendment.

The second 1973 amendment, effective September 1, 1973, rewrote subsections (a) through (d) and inserted "or renewal" near the beginning of the first sentence of subsection (e).

The third paragraph of subsection (a) of the section rewritten by the second 1973 amendment corresponds to the first sentence of the second paragraph of subsection (a) in the section as it stood before the amendments, and, therefore, the substitutions made by the first 1973 amendment have been made in that paragraph in the section as set out above.

Session Laws 1973, c. 821, s. 7, contains a severability clause.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.2. Special orders.—(a) Issuance.—The Board is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Board deems necessary and feasible in order to alleviate or eliminate such pollution. The Board is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Board issued pursuant to hearing.

(b) Procedure.—No special order shall be issued by the Board (unless issued upon consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.4 and in any applicable rules of procedure of the Board. Every special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals.—Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Board shall be final and binding.

(d) Effect of Compliance.—Any person who installs a treatment works for the

purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued [pursuant] to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Board or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Board or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

- (1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and
- (2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, c. 1131, s. 2; 1967, c. 892, s. 1; 1973, c. 698, s. 3.)

Editor's Note.—The 1973 amendment re-wrote this section.

Session Laws 1973, c. 698, s. 18, contains a severability clause.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.3. General powers of Board; auxiliary powers.—(a) In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Board shall have the power:

- (1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article: Provided, that no regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4;
- (2) To conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties;
- (3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article;

(4) To delegate such of the powers of the Board as the Board deems necessary to one or more of its members, to its director, assistant director, or to any other qualified employee of the Board; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Board; and provided further that the Board shall not delegate to persons other than its own members and its own qualified employees the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subsection (a) (12) for the abatement of existing water or air pollution. Any employee of the Department of Natural and Economic Resources to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board.

(5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the Board has occurred, or, in the discretion of the Board, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Board may deem necessary for the enforcement of any of the provisions of this Article or of any official action of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board;

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To investigate any killing of fish and wildlife which, in the opinion of the Board, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Board may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Board and the North Carolina Wildlife Resources Commission or the North Carolina Department of Conservation and Development, whichever has jurisdiction over the fish or wildlife destroyed, to be the replacement costs thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Board shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as it deems proper and reasonable, and if no settlement is reached within a reasonable time, the Board shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be *prima facie* evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department of Conservation and Development to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Board on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery had, less the cost of investigations, recovered and retained or otherwise disbursed by the Board to the appropriate investigating agencies, shall be paid to the appropriate State agency to be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Board, after public hearing held pursuant to the provisions of G.S. 143-215.4, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article. The Board may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Board shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Board that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given by publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing; and by registered or certified mail at least 20 days in advance of hearing to the governing body of each county, city, town, metropolitan sewerage district, water and sewer district and any other political subdivision lying, in whole or in part, within the area; to every person within the area whose permit application is pending; to every affected or interested agency of local, State, and federal government; and to any other person whom the Board believes to have a direct interest therein.

Any person who is adversely affected by the order of the Board may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal.

(9) If an investigation conducted pursuant to this Article reveals a violation of any regulations, standards, or limitations adopted by the Board pursuant to this Article, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or G.S. 143-215.108, or spe-

cial order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.74, the Board may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Board may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Board may institute a civil action in the superior court of the county in which the violation occurred or, in the Board's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require any laboratory facility performing or seeking to perform any tests, analyses, measurements, or monitoring required by this Article or regulations of the Board implementing the provisions of this Article to be certified by the Board in accordance with standards established for such facilities in its regulations; and to charge a reasonable fee for certifying any such laboratory facility.

(11) Local Air Pollution Control Programs.

a. To review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and any applicable standards and rules and regulations pursuant thereto. The Board shall certify any local program which:

1. Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article, and the standards and rules and regulations issued pursuant thereto; provided, however, the Board upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Board;
2. Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;
3. Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and
4. Is approved by the Board as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

b. No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of subdivision (11) of subsection (a) of this section and is so certified by the Board.

c. If the Board finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an

area-wide air pollution control program, the Board may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration.

- d.
 1. If the Board has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this Article, the Board shall, upon due notice, conduct a hearing on the matter.
 2. If, after such hearing the Board determines that an existing local air pollution control program or one which has been certified by the Board is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.
 3. If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Board shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.
 4. If the Board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.
 5. Any municipality or county in which the Board administers its air pollution control program pursuant to paragraph 3 of this subdivision may, with the approval of the Board, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Board.
 6. Nothing in this Article shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article for certification by the Board as an approved local air pollution control program. Any certification required from the Board shall

be deemed granted unless the Board takes specific action to the contrary.

7. Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Board. The Board shall approve any such application if it is consistent with this Article and other applicable requirements of law.
8. Notwithstanding any other provision of this section, if the Board determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Board, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emissions of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary.

e. Local air pollution control programs authorized.—1. The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article, subject to the approval of the Board of Water and Air Resources, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

- i. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
- ii. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
- iii. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
- iv. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Board of Water and Air Resources; and administration of such rules, regulations and standards in accordance with provisions of this subdivision.
- v. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of

approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

- vi. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.
- 2. Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the State Board of Water and Air Resources and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.
- 3. The penalty for violation of any of the requirements contained in such ordinances, resolutions, rules or regulations shall, upon conviction, be a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days, except that the penalty for violation of an order for the abatement of air pollution issued by the governing body after notice and hearing shall, upon conviction, be a fine of not more than two hundred fifty dollars (\$250.00) or imprisonment for not more than 30 days. Each day in violation shall constitute a separate offense and shall be subject to the foregoing penalties.
- 4. Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same.
- 5. In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such

expenditures are hereby declared to be for a public purpose and a necessary expense.

6. Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of Chapter 143, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.
- f. Administration of county or municipal air pollution control programs.—Subject to the approval of the Board of Water and Air Resources as provided in this Article, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:
 1. Establishing a program under the administration of the duly elected governing body of the county or municipality;
 2. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;
 3. Appointing an air pollution control board as provided in this section, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and
 4. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.
- g. Creation and administration of regional air pollution control programs.—In addition to any other powers provided by law and subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Board of Water and Air Resources, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Board of Water and Air Resources for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms

of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the assistant director, with the approval of the director and the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Board shall fix a place and time for a hearing before the Board to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Board shall either affirm, modify or set aside the order of the assistant director.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the assistant director finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the approval of the director and the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this provision shall apply.

(13) To certify and approve for eligibility any qualified application for State or federal grant funds available for the construction, modification, extension, maintenance, or operation of a disposal system or portion thereof. As a condition of certification and approval of any such application and of the permit issued pursuant to G.S. 143-215.1, the Board may require that the applicant conform to all applicable requirements of the State or federal laws and programs under which said grant funds are available.

Nothing in this subsection shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

(e) Variances.—Any person subject to the provisions of G.S. 143-215.1 or G.S. 143-215.108 may apply to the Board for a variance from rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, G.S. 143-215, or G.S. 143-215.107. The Board may grant such variance, but only after public hearing on due notice, if it finds that:

- a. The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and
- b. Compliance with the rules, regulations, standards or limitations from which variance is sought cannot be achieved by application of best available technology economically achievable at the time of application for such variance, or would produce serious hardship without equal or greater benefits to the public. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1.)

Editor's Note.—

The first 1973 amendment, in subsection (a), inserted "and to delegate the power to conduct public hearings" in subdivision (3), substituted "Department of Natural and Economic Resources" for "Board" in the last sentence of subdivision (4) and deleted "for decision" at the end of that sentence, inserted, in subdivision (5), the language beginning "of any county" and ending "discretion of the Board in the superior court of," rewrote subdivisions

(8), (9) and (10) and added subdivision (13). The first 1973 amendment also added subsection (e).

The second 1973 amendment added the last two sentences of the first paragraph of subdivision (a) (7).

As subsections (b), (c) and (d) were not changed by the amendments, they are not set out.

Session Laws 1973, c. 698, s. 18, contains a severability clause.

§ 143-215.4. General provisions as to procedure; seal; hearing officer.

(e) One or more qualified employees of the Department of Natural and Economic Resources may be designated as hearing officers to conduct any hearings provided for in this Article in accordance with the procedures established for such hearings by law and the official rules and regulations of the Board. Unless otherwise provided in the Board's regulations, an order or decision of a hearing officer shall be final and to the same effect as an order or decision of the Board. Appeal from a final order or decision of a hearing officer shall be as provided in G.S. 143-215.5. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 10.)

Editor's Note.— The 1973 amendment added subsection (e).

Session Laws 1973, c. 698, s. 18, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 143-215.5. Judicial review.—(a) Any person against whom a final order or decision has been entered by a hearing officer pursuant to G.S. 143-215.4(d) shall be entitled to a review of the order or decision by the full Board upon written demand by such person within 10 days following notice of the order or decision given by registered or certified mail. The Board shall review the order or decision, the transcript of evidence and exhibits submitted at hearing, and other pertinent matters, and, if good ground be shown therefor, shall reconsider the evidence, receive further evidence, rehear the parties or their representatives, and affirm, modify, or vacate the order or decision. If the order or decision was entered

pursuant to a hearing conducted by a member or members of the Board, such member or members shall be disqualified from sitting in review of the order or decision. A majority of the members of the Board shall constitute the full Board on review.

(b) Any person against whom a final order or decision of the Board is entered pursuant to hearing conducted by the Board under G.S. 143-215.4(d), or is entered upon review of an order or decision by a hearing officer or member or members of the Board to whom such authority has been duly delegated, may appeal from the order or decision of the Board within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, to the Superior Court of Wake County or of the county where the order or decision is effective. Upon such appeal the Board shall send a certified transcript of all testimony and exhibits introduced before the Board, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined *de novo* on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Court of Appeals. No bond shall be required of the Board to the Court of Appeals.

- (1) Upon appeal filed by any party, the Board shall forthwith furnish each party to the proceeding with a copy of a certified transcript and exhibits filed with the Board. A reasonable charge shall be paid the Board for said copies.
- (2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 108, s. 88; c. 698, s. 11.)

Editor's Note.—The first 1973 amendment substituted "appellate division" for "Supreme Court" in the fifth and sixth sentences of this section as it stood before the 1973 amendments.

The second 1973 amendment added subsection (a), designated the former provisions of this section as subsection (b), re-

wrote the first sentence of subsection (b) and substituted "Court of Appeals" for "Supreme Court" in the fifth and sixth sentences of subsection (b).

Session Laws 1973, c. 698, s. 18, contains a severability clause.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.6. Enforcement procedures.—(a) Civil Penalties.—

- (1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Board against any person who:
 - a. Violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or G.S. 143-215.
 - b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
 - c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
 - d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article.
 - e. Refuses access to the Board or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article.
 - f. Violates any duly adopted regulation of the Board implementing the provisions of this Article.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Board may assess a penalty not to exceed five thousand dollars (\$5,000) per day for so long as the violation continues.

(3) The Board may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural and Economic Resources within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Board may specify, the Board may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Board, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Board's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.

(b) Criminal penalties.—

(1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or G.S. 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any regulation of the Board implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment not to exceed six months, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or regulations of the Board implementing this Article, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or regulations of the Board implementing this Article, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

(3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.

(4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) Injunctive Relief.—Whenever the Department of Natural and Economic Resources has reasonable cause to believe that any person has violated or is threaten-

ing to violate any of the provisions of this Article or any regulations adopted by the Board implementing the provisions of this Article, the Department of Natural and Economic Resources may, either before or after the institution of any other action or proceeding authorized by this Article, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural and Economic Resources for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Article or the regulations of the Board has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2.)

Editor's Note.—The first 1973 amendment rewrote this section.

The second 1973 amendment added to subsection (a) of this section as it stood before the enactment of the amendments a new subdivision (3), reading as follows:

"(3) To willfully and unlawfully cause pollution of the waters or air as defined in this Article, in such quantity, concentra-

tion or manner that fish or wildlife are killed as a result thereof in such numbers as to justify investigation pursuant to G.S. 143-215.3(a)(7)."

Session Laws 1973, c. 698, s. 18, contains a severability clause.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.

Editor's Note.—Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this section by substituting "Department of

Human Resources" for "State Board of Health."

§ 143-215.8: Repealed by Session Laws 1973, c. 698, s. 13.

Cross Reference.—For present provisions covering the subject matter of the repealed section, see § 143-215.6, subdivision (c).

Editor's Note.—

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.8A. Planning.—(a) Policy, Purpose and Intent.—The Board and Department of Natural and Economic Resources shall undertake a continuing planning process to develop and adopt plans and programs to assure that the policy, purpose and intent declared in this Article are carried out with regard to establishing and enforcing standards of water purity designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to enhance the quality of the environment, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development, and to insure the beneficial use of the water resources of the State.

(b) Goals.—The goals of the continuing planning process shall be the enhancement of the quality of life and protection of the environment through development by the Board of water quality plans and programs utilizing the resources of the State on a priority basis to attain, maintain, and enhance water quality standards and water purity throughout the State.

(c) Statewide and Regional Planning.—The planning process may be conducted on a statewide or regional basis, as the Board shall determine appropriate. If the Board elects to proceed on a regional basis, it shall delineate the boundaries of each region by preparation of appropriate maps; by description referring to geographical features, established landmarks or political boundaries; or such other

manner that the extent and limits of each region shall be easily ascertainable. The Board shall consult officials and agencies of localities and regions in the development of plans affecting those areas.

(d) Local Planning Organizations.—The Board shall submit to the Governor or his designee any plans, projections, data, comments or recommendations that he may request. If the Governor determines that the goals of this section will be more expeditiously and efficiently achieved, he may designate a representative organization, capable of carrying out a planning process for any region of the State or area therein, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area. The Board shall consult with, advise, and assist any organization so designated in the preparation of its plans and shall submit to the Governor the Board's comments and recommendations regarding such plans. All such organizations shall submit plans developed by them to the Governor for review, and no plan shall be effective until concurred in and approved by him.

(e) Interstate Planning Regions.—The Governor may consult and cooperate with the governor of any adjoining state in establishing an interstate planning region or area and in designating a representative organization, capable of carrying out a planning process for the region or area, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area, if he determines that such region or area has common water quality control problems for which an interstate plan would be most effective.

(f) The Board shall establish procedures for the development, revision and modification of plans under this section through adoption of appropriate rules and regulations. The rules and regulations of the Board shall establish procedures for public hearing on all plans prior to their adoption, modification or revision, and upon adoption, they shall become the official water quality management plans of the State. (1973, c. 698, s. 13.)

Editor's Note. — Session Laws 1973, c. 698, s. 18, contains a severability clause.

Part 2. Regulation of Use of Water Resources.

§ 143-215.13. Declaration of capacity-use areas.

(d) The Board may conduct a public hearing pursuant to the provisions of G.S. 143-215.4 in any area of the State, whether or not a capacity-use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Board determines, pursuant to hearing, that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Board may issue an order:

- (1) Prohibiting any person withdrawing waters in excess of one hundred thousand (100,000) gallons per day from increasing the amount of the withdrawal above such limit as may be established in the order.
- (2) Prohibiting any person from constructing, installing or operating any new well or withdrawal facilities having a capacity in excess of a rate established in the order; but such prohibition shall not extend to any new well or facility having a capacity of less than ten thousand (10,000) gallons per day.
- (3) Prohibiting any person discharging water pollutants to the waters from increasing the rate of discharge in excess of the rate established in the order.

- (4) Prohibiting any person from constructing, installing or operating any facility that will or may result in the discharge of water pollutants to the waters in excess of the rate established in the order.
- (5) Prohibiting any agency or political subdivision of the State from issuing any permit or similar document for the construction, installation, or operation of any new or existing facilities for withdrawing water from or discharging water pollutants to the waters in such area in excess of the rates established in the order.

The determination of the Board shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Board that the generalized condition of water depletion or water pollution within the area has ceased.

Notice setting forth the time, place and purpose of the hearing and a description by geographical or political boundaries of the area affected shall be given:

- (1) By publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing;
- (2) By mailing copies of the notice by registered or certified mail at least 20 days in advance of hearing to the governing body of every county, city, town, and affected political subdivision lying in whole or in part within the area and to every affected or interested State and federal agency; and
- (3) By posting a copy of the notice at the courthouse in every county lying, in whole or in part, within the area.

The Board is also authorized, in the exercise of its discretion, to mail copies of notice by first-class mail to any person who it believes will or may be interested in or affected by the hearing.

Upon issuance of any order by the Board pursuant to this subsection, a certified copy of such order shall be mailed by registered or certified mail to the governing body of every county, city, town, and affected political subdivision lying, in whole or in part, within the area and to every affected or interested State and federal agency. A certified copy of the order shall be posted at the courthouse in every county lying, in whole or in part, within the area, and a notice setting forth the substantive provisions and effective date of the order shall be published once a week for two successive weeks in a newspaper or newspapers having general circulation within the area. After publication of notice is completed, any person violating any provision of such order after the effective date thereof shall be subject to the penalties and proceedings set forth in G.S. 143-215.17.

Any person who is adversely affected by an order of the Board issued pursuant to this subsection may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal. (1967, c. 933, s. 3; 1973, c. 698, s. 14.)

Editor's Note. — The 1973 amendment added subsection (d).

Session Laws 1973, c. 698, s. 18, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 143-215.15. Permits for water use within capacity-use areas—procedures.

(g) Any person against whom any final order or decision has been made except where no appeal is allowed as provided by G.S. 143-215.2(j) shall have a right of appeal to the Superior Court of Wake County or of the county where the

order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Board shall send a certified transcript of all testimony and exhibits introduced before the Board, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined *de novo* on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the appellate division. No bond shall be required of the Board to the appellate division.

- (1) Upon appeal filed by any party, the Board shall forthwith furnish each party to the proceeding with a copy of the certified transcript and exhibits filed with the Board. A reasonable charge shall be paid the Board for said copies.
- (2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript.

(1973, c. 108, s. 89; c. 698, s. 15.)

Editor's Note.—The first 1973 amendment substituted "appellate division" for "Supreme Court" in the fifth and sixth sentences of subsection (g).

The second 1973 amendment directed that "Court of Appeals" be substituted for "Supreme Court" in the fifth and sixth sentences of subsection (g). Since the words "Supreme Court" no longer ap-

peared in these sentences at the time of enactment of the second amendatory act, the section is set out above as amended by the first 1973 act.

As the rest of the section was not changed by the amendments, only subsection (g) is set out.

Session Laws 1973, c. 698, s. 18, contains a severability clause.

§ 143-215.17. Violations.

(b) Civil Actions.—In addition, upon violation of any of the provisions of this Part, or the regulations of the Board hereunder, the Secretary of the Department may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violation, institute, either in the county in which the violation occurred, or, at the Secretary's discretion, in the county wherein the violator resides or has his or its principal place of business, a civil action in the superior court in the name of the State upon relation of the Secretary of the Department for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the same. (1967, c. 933, s. 7; 1973, c. 698, s. 16.)

Editor's Note.—The 1973 amendment substituted "Secretary" for "Director" in two places in the first sentence of subsection (b) and inserted in that sentence "either in the county in which the violation occurred, or, at the Secretary's discretion, in the county wherein the violator resides

or has his or its principal place of business."

As subsection (a) was not changed by the amendment, it is not set out.

Session Laws 1973, c. 698, s. 18, contains a severability clause.

Part 3. Dam Safety Law.

§ 143-215.26. Construction of dams.—(a) No person shall begin the construction of any dam, as defined by this part, until at least 10 days after filing with the Department a statement concerning its height, impoundment capacity,

purpose, location and other information required by the Department. Persons proposing construction described in G.S. 143-215.25, subparagraphs (2)e and f will comply with malaria control requirements of the Department of Human Resources. If on the basis of this information the Department is of the opinion that the proposed dam is not exempt from the provisions of this part, it shall so notify the applicant, and construction shall not be commenced until a full application is filed by the applicant and approved as provided by G.S. 143-215.29. The Department may also require of applicants so notified the filing of such additional information as it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans and specifications. Every applicant for approval of a dam subject to the provisions of this part shall also file with the Department the certificate of an engineer or contractor legally qualified in the State of North Carolina that he is responsible for the design of the dam, and that said design is safe and adequate. Should the applicant have a professional engineering staff the certificate of a registered professional engineer member of that staff legally qualified in the State of North Carolina will constitute compliance.

(b) When an application has been completed pursuant to the preceding subsection, the Department shall refer copies of the completed application papers to the Department of Human Resources, the Wildlife Resources Commission, the Department of Conservation and Development, the Board of Transportation, and such other State and local agencies as it deems appropriate for review and comment. (1967, c. 1068, s. 4; 1973, c. 476, s. 128; c. 507, s. 5.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health."

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in subsection (b).

Part 4. Federal Water Resources Development Projects.

§ 143-215.38. Short title.

Authority of the State, Counties, Municipalities and Local Government Units to Contract with the Secretary of the Army for Water Resources Projects.—See

opinion of Attorney General to Major General R.H. Free, 41 N.C.A.G. 522 (1971).

§ 143-215.41. Items of cooperation to which localities and the State may bind themselves.—Such resolutions and ordinances may irrevocably bind such county, municipality, other local unit, of the State of North Carolina, acting through the Board of Water and Air Resources, to the following when included as requirements of local cooperation for a federal water resources development project:

- (1) To provide, without cost to the United States, all lands, easements, and rights-of-way required for construction and subsequent maintenance of the project and for aids to navigation, if required, upon the request of the Chief of Engineers, or other official to be required in the general public interest for initial and subsequent disposal of spoil, and also necessary retaining dikes, bulkheads, and embankments therefor, or the costs of such retaining works;
- (2) To hold and save the United States free from damages due to the construction works and subsequent maintenance of the project;
- (3) To provide firm assurances that riverside terminal and transfer facilities will be constructed at the upper limit of the modified project to permit transfer of commodities from or to plants and barges;
- (4) To provide and maintain, without cost to the United States, depths in berthing areas and local access channels serving the terminals commensurate with depths provided in related project areas;
- (5) To accomplish, without cost to the United States, such alterations, if any,

as required in sewer, water supply, drainage, electrical power lines, and other utility facilities, as well as their maintenance;

- (6) To provide, without cost to the United States, all lands, easements, rights-of-way, utility relocations and alterations, and, with the concurrence and under the direction of the Board of Transportation, highway or highway bridge construction and alterations necessary for project construction;
- (7) To adjust all claims concerning water rights;
- (8) To maintain and operate the project after completion, without cost to the United States, in accordance with regulations prescribed by the Secretary of the Army or other responsible federal official, board, or agency;
- (9) To provide a cash contribution for project costs assigned to project features other than flood control;
- (10) To prevent future encroachment which might interfere with proper functioning of the project for flood control;
- (11) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional or other federal document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which counties, municipalities and the State are herein authorized to irrevocably bind themselves; it being intended to authorize counties, municipalities and the Board of Water and Air Resources in behalf of the State to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned, or project reports by the Army Chief of Engineers, the Administrator of the Soil Conservation Service, the Board of Directors of the Tennessee Valley Authority, or other responsible federal official, board or agency. (1969, cc. 724, 968; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in subdivision (6).

Session Laws 1973, c. 621, s. 1, directs that this section be amended "by striking from line 2 thereof the word 'of' imme-

dately following the words 'the State of North Carolina' and inserting in lieu thereof the word 'or.'" Since the word "of" precedes, rather than follows, "the State of North Carolina," no effect can be given to the amendment.

§ 143-215.42. Acquisition of lands.—(a) For the purpose of complying with the terms of local cooperation as specified in Chapter 143, Article 21, Part 4, and as stipulated in the congressional document covering the particular project involved, any county, municipality, other local government unit or the State of North Carolina, acting on behalf of the Board of Water and Air Resources, may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation. A municipality, county or other local government unit may acquire such lands by any of the aforesaid means outside as well as inside its territorial boundaries, if the local governing body finds that substantial benefits will accrue to property inside such territorial boundaries as a result of such acquisition.

(b) The power of condemnation herein granted to counties, municipalities and other local government units may be exercised only after:

- (1) The municipality, county or other local unit makes application to the Board of Water and Air Resources, identifying the land sought to be condemned and stating the purposes for which said land is needed; and
- (2) The Board of Water and Air Resources finds that the land is sought to be acquired for a proper purpose within the intent of Chapter 143, Article 21, Part 4. The findings of the Board of Water and Air Resources

will be conclusive in the absence of fraud, notwithstanding any other provision of law.

(f) Interests in land acquired pursuant to this section may be used in such manner and for such purpose as the condemning authority deems best. If the local government unit so determines, such lands may be sold, leased, or rented, subject to the prior approval of the Board of Water and Air Resources. The State may sell, lease or rent any lands acquired by it, and if the Board of Water and Air Resources is participating with any local government unit or units in a water resources project under this Article, may convey such lands or interests to the unit or units as a part of its participation therein.

(1973, c. 621, ss. 2-4.)

Editor's Note.—The 1973 amendment deleted "or" preceding "other local government unit" and inserted "or the State of North Carolina, acting on behalf of the Board of Water and Air Resources" in the first sentence of subsection (a), inserted "to counties, municipalities and other local government units" in the introductory paragraph of subsection (b), and substi-

tuted "purpose as the condemning authority" for "purposes as the local governing body" in the first sentence, rewrote the second sentence and added the third sentence of subsection (f).

As the rest of the section was not changed by the amendment, only subsections (a), (b) and (f) are set out.

Part 6. Floodway Regulation.

§ 143-215.51. Preamble.—The purpose of this Part is to specify means for regulation of artificial obstructions in floodways. It is hereby declared that the channel and a portion of the floodplain of all the State's streams will be designated as a floodway, in which artificial obstructions may not be placed except in accordance with the provisions of this Part. The purpose of designating these areas as a floodway is to help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, and thereby to prevent and minimize loss of life, injuries, property damage and other losses (both public and private) in flood hazard areas, and to promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas. (1971, c. 1167, s. 3; 1973, c. 621, s. 5.)

Editor's Note.—

The 1973 amendment deleted, at the end of the first sentence, "by responsible local governments with guidance, coordination and assistance from State government, consonant with the State policy of vesting primary responsibility for floodplain man-

agement with local levels of government" and substituted, at the end of the second sentence, "in accordance with the provisions of this Part" for "with the permission of the responsible local government."

§ 143-215.54. Floodway uses. — (a) Local governments are empowered to grant permits for the use of the floodways consistent with the purposes of this Part.

(b) The following uses may be made of floodways as a matter of right without a permit issued under this Part:

- (1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.
- (2) Loading areas, parking areas, rotary aircraft ports, and other similar industrial-commercial uses.
- (3) Lawns, gardens, parking, play areas, and other similar uses.
- (4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, swimming pools, hiking or horseback-riding trails, open space and other similar private and public recreational uses.
- (5) Streets, bridges, overhead utility lines, railway lines and rights-of-way,

creek and storm drainage facilities, sewage or waste treatment plant outlets, water supply intake structures, and other similar public, community or utility uses.

- (6) Temporary facilities (for a specified number of days), such as displays, circuses, carnivals, or similar transient amusement enterprises.
- (7) Boat docks, ramps, piers, or similar structures.
- (8) Dams. (1971, c. 1167, s. 3; 1973, c. 621, s. 8.)

Editor's Note.—The 1973 amendment inserted "railway lines and rights-of-way" in subdivision (b)(5).

§ 143-215.56. Delineation of floodway; powers of Board of Water and Air Resources; powers of local governments.

(c) A local government may delineate any floodway subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. The Board of Water and Air Resources may delineate a floodway, in the same manner and subject to the same requirement, when the reach of a stream in which a floodway is determined by the Board to be needed exceeds the jurisdiction of a single local government. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of such map or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government or the Board may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing and approval thereof as designated and provided above.

(d) If the Board of Water and Air Resources determines that the floodway of any stream or stream segment should be delineated and the use thereof controlled as provided in this Part, and the local governments within which the stream or segment lies have not delineated the floodway or controlled uses therein, the Board shall advise the local governments of its intent to delineate the floodway, and it shall be the responsibility of the local governments to control uses therein. At least 30 days prior to the effective date specified in the resolution of the Board establishing any floodway, notice of the effective date and copies of such rules and regulations shall be delivered to every affected local government along with copies of all maps and plans delineating the floodway. Public notice of the resolution shall be given at least 30 days prior to the effective date by publication of a notice once a week for two successive weeks in a newspaper or newspapers having general circulation in the county or counties in which each affected local government lies and by posting a copy of the notice at the courthouse of each such county, along with a sketch map showing the stream or stream segment affected. The notice shall be adequate to apprise all interested persons of the nature of the rules and regulations, the effective date thereof, the stream or stream segment affected, and the manner in which more detailed information may be secured. (1971, c. 1167, s. 3; 1973, c. 621, ss. 6, 7.)

Editor's Note.—The 1973 amendment re-wrote subsection (c) and added subsection (d).

As the rest of the section was not changed by the amendment, only subsections (c) and (d) are set out.

Part 7. Water and Air Quality Reporting.

§§ 143-215.70 to 143-215.74: Reserved for future codification purposes.

ARTICLE 21A.

Oil Pollution Control.

Part 1. General Provisions.

§ 143-215.75. Title.—This Article shall be known and may be cited as the "Oil Pollution Control Act of 1973." (1973, c. 534, s. 1.)

Editor's Note.—Session Laws 1973, c. 534, s. 2, makes the act effective Sept. 1, 1973.

The last section of this Article as it appears in the 1973 act provides:

"Severability. — (a) General Severability Clause. — If any provision of this Article or the application thereof to any person or circumstance is held invalid, whether by federal or State constitutions or laws, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

"(b) Special Severability Clause.—Without limiting the effect of subsection (a) of this section, the following provisions of this Article are hereby specifically declared to be severable:

(i) This Article in its entirety is intended to be severable from the

general water pollution control laws of North Carolina (G.S. Chapter 143, Article 21, Part 1 and related statutes).

- (ii) The provisions of this Article, in their application to inland waters and related lands, are intended to be severable from those provisions in their application to coastal and marine waters and related lands.
- (iii) The various liability and penalty provisions of this Article (including G.S. 143-484, G.S. 143-485, G.S. 143-486, G.S. 143-487(a) and G.S. 143-487(b), as well as the several components of each of said sections and subsections) are intended to be severable from one another.
- (iv) Part 3 of this Article is intended to be severable from Part 2."

§ 143-215.76. Purpose.—It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products. It is not the intention of this Article to exercise jurisdiction over any matter as to which the United States government has exclusive jurisdiction, nor in any wise contrary to any governing provision of federal law, and no provision of this Article shall be so construed. The General Assembly further declares that it is the intent of this Article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq., as amended, and the National Contingency Plan for removal of oil adopted pursuant thereto. (1973, c. 534, s. 1.)

§ 143-215.77. Definitions. — As used in this Article, unless the context otherwise requires:

- (1) "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
- (2) "Board" shall mean the North Carolina Board of Water and Air Resources.
- (3) "Director" shall mean the North Carolina Director of Water and Air Resources.
- (4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into waters, or upon land in such proximity to waters that oil is reasonably likely to reach the waters, but shall not include discharges in amounts determined by the Board to be not harmful to the public health or welfare (including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches); provided, however, that this act shall not be construed to prohibit the oiling of

driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person on agricultural, horticultural, or forestry crops, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge.

- (5) "Having control over oil" shall mean, but shall not be limited to, any person using, transferring, storing, or transporting oil immediately prior to a discharge of such oil onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil.
- (6) "Land" shall mean only land from which it is reasonably likely that oil will flow into the waters of this State.
- (7) "Office" shall mean the North Carolina Office of Water and Air Resources.
- (8) "Oil" shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.
- (9) "Oil bailee" shall mean any person who accepts oil to hold in trust for another for a special purpose and for a limited period of time.
- (10) "Oil carrier" shall mean any person who engages in the transportation of oil for compensation.
- (11) "Oil terminal facility" shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.
- (12) "Operator" shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.
- (13) "Person" shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.
- (14) "Pipeline" shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.
- (15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.
- (16) "Transfer" shall mean the transportation, on-loading or off-loading of

oil between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.

(17) "Vessel" shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term "vessel" as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.

(18) "Waters" shall mean any stream, river, creek, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction. (1973, c. 534, s. 1.)

§ 143-215.78. Oil pollution control program.—The Board shall establish within the office an oil pollution control program for the administration of this Article. The Board may employ and prescribe the duties of employees assigned to this activity. (1973, c. 534, s. 1.)

§ 143-215.79. Inspections and investigations; entry upon property. — The Board, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil discharged to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Board are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil discharges or to perform any restoration necessitated by an oil discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity. (1973, c. 534, s. 1.)

§ 143-215.80. Confidential information.—Any information relating to a secret process, device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity conducted pursuant to this Article shall not be revealed except as may be required by law or lawful order or process. (1973, c. 534, s. 1.)

§ 143-215.81. Authority supplemental. — The authority and powers granted under this Article shall be in addition to, and not in derogation of, any authority or powers vested in the Board under any other provision of law, except to the extent that such other powers or authority may conflict directly with the powers and authority granted under this Article; and the Board is empowered to adopt such rules and regulations as are necessary to administer and carry out the purposes of this Article. (1973, c. 534, s. 1.)

§ 143-215.82. Local ordinances. — Nothing in the Article shall be construed to deny any county, municipality, sanitary district, metropolitan sewerage

district or other authorized local governmental entity, by ordinance, regulation or law, from exercising police powers with reference to the prevention and control of oil discharges to sewers or disposal systems. (1973, c. 534, s. 1.)

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges.—(a) **Unlawful Discharges.**—It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) **Excepted Discharges.**—This section shall not apply to discharges of oil in the following circumstances:

- (1) When the discharge was authorized by an existing regulation of the Board.
- (2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:
 - a. An act of God.
 - b. An act of war or sabotage.
 - c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.
 - d. An act or omission of a third party, whether any such act or omission was or was not negligent.
 - e. Any act or omission by or at the direction of a law-enforcement officer or fireman.

(c) **Permits.**—Any person who desires or proposes to discharge oil onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules and regulations adopted by the Board. Any permit granted pursuant to this subsection may contain such terms and conditions as the Board shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein. (1973, c. 534, s. 1.)

§ 143-215.84. Removal of prohibited discharges.—(a) **Person Discharging.**—Any person having control over oil discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Board.

(b) **Removal by Board.**—Notwithstanding the requirements of subsection (a) of this section, the Board is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil discharged onto the land or into the waters of the State and to perform any necessary restoration. The director shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects

and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. (1973, c. 534, s. 1.)

§ 143-215.85. Required notice.—Every person owning or having control over oil discharged in violation of the provisions of this Article, upon notice that such discharge has occurred, shall immediately notify the office, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the office receiving the notification shall immediately notify the director or assistant director of the Board or such member or members of the permanent staff of the office as the director may designate. (1973, c. 534, s. 1.)

§ 143-215.86. Other State agencies. — (a) Cooperative Effort. — The North Carolina State Highway Commission, the North Carolina Department of Conservation and Development, the North Carolina Wildlife Resources Commission, and any other agency of this State shall cooperate with and lend assistance to the Board by assigning to the Board upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil discharged upon the land or into the waters of this State.

(b) Planning.—Subsequent to May 16, 1973 and prior to September 1, 1973, designated representatives of the Board, the State Highway Commission, the Department of Conservation and Development and the Wildlife Resources Commission and any other agency or agencies of the State which the Board shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules and regulations as shall be necessary to effectuate the purposes of this section.

(c) Accounts.—Every State agency participating in the containment, collection, dispersal or removal of an oil discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Board upon completion of the project or activity. (1973, c. 534, s. 1.)

§ 143-215.87. Oil Pollution Protection Fund.—There is hereby established under the control and direction of the Board an Oil Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil discharged to the land or waters of this State or for restoration necessitated by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Board under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Board as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word "penalties" means civil penalties and does not include criminal fines or penalties. (1973, c. 534, s. 1.)

§ 143-215.88. Payments to State agencies.—Upon completion of any oil removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State that has participated by furnishing personnel, equipment or material shall deliver to the Board a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the director to each such agency from the Oil Pollution Protection Fund. Upon completion of any oil removal or restoration project or activity, the director shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the oil discharged to the land or waters of the State, unless the Board shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-215.84(b). Any person having control of oil discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil shall be directly liable to the State for the necessary expenses of oil cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person having control over the oil discharged shall fail or refuse to pay the sum expended by the State, the director shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses. (1973, c. 534, s. 1.)

Editor's Note.—It would seem that the reference in this section to § 143-215.84(b) should be to § 143-215.83(b).

§ 143-215.89. Multiple liability for necessary expenses.—Any person liable for costs of cleanup of oil under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil into the waters of the State, including any amount recoverable by the State as necessary expenses. The total recovery by the State for damage to public resources pursuant to G.S. 143-215.91 and for the cost of oil cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of any such discharge. (1973, c. 534, s. 1.)

§ 143-215.90. Liability for damage to public resources.—Any person who violates any of the provisions of this Article, or any order, rule or regulation of the Board adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the Board made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Board of Water and Air Resources, shall be liable to pay the State damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands adjoining the seacoast to their condition prior to the injury, as such condition is determined by the Board of Water and Air Resources in conference with the Board of Conservation and Development, the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation (or by the designees of any or all of such boards, commissions and agencies). Such damages shall be recoverable in an action brought by the Attorney General in the name of the State in the superior court of the county in which the damage occurred or in which the violator resides or has his or its principal place of business, as he shall elect; provided, that if damages occurred in more than one county, the Attorney General may bring an action in any of the counties where the damages occurred.

Any money so recovered by the Attorney General shall be transferred by the Board to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part. (1973, c. 534, s. 1.)

§ 143-215.91. Penalties.—(a) Civil Penalties.—Any person who intentionally or negligently discharges oil, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the Board after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, and such other considerations as the Board deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Board describing the violation with reasonable particularity and advising such person that the penalty is due. The Board may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Board may adopt. If the amount of such penalty is not paid to the Department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the Board subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Board, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business, to recover the amount specified in the final order of the Board. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

(b) Criminal Penalties.—Any person who intentionally or knowingly or willfully discharges or causes or permits the discharge of oil in violation of this Part shall be guilty of a misdemeanor punishable by imprisonment not to exceed six months or by fine to be not more than ten thousand dollars (\$10,000), or by both, in the discretion of the court. No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts. (1973, c. 534, s. 1.)

§ 143-215.92. Lien on vessel.—Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States government) from which oil is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil removal specified in this Part and such penalty and costs shall

constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the Board in an amount and with sureties acceptable to the Board, or a cash deposit is made with the Board in an amount acceptable to the Board. Provided further, that such lien shall not have priority over any existing perfected lien or security interest. The Board may adopt regulations providing for such conditions, limitations, and requirements concerning the bond or deposit prescribed by this section as the Board deems necessary. (1973, c. 534, s. 1.)

§ 143-215.93. Liability for damage caused.—Any person having control over oil which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G.S. 143-215.83(b). (1973, c. 534, s. 1.)

§ 143-215.94. Joint and several liability.—In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. 143-215.89 through 143-215.92(a), 143-215.04 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any one or more of the persons having control over the oil or causing or contributing to the discharge of oil. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common law principles. (1973, c. 534, s. 1.)

Part 3. Oil Terminal Facilities.

§ 143-215.95. Duties of Secretary of Natural and Economic Resources.—The Secretary of Natural and Economic Resources shall administer the provisions for registration of oil terminal facilities contained in this Part. In addition, he shall engage in such study and research concerning oil terminal facilities and their regulation in this State and elsewhere as may be required to furnish the General Assembly with a thorough factual basis for his recommendations for further legislation pursuant to this Part. (1973, c. 534, s. 1.)

§ 143-215.96. Oil terminal facility registration.—Prior to November 10, 1973, the owner or operator of every oil terminal facility in the State shall secure a registration certificate from the Secretary of Natural and Economic Resources. Such a certificate shall be issued only where the applicant shall have furnished the following information concerning the oil terminal facility:

- (1) Complete name of owner and operator of the oil terminal facility together with addresses and telephone numbers;
- (2) Number of employees of the oil terminal facility and the principal officers;
- (3) Maps or sketches, based on criteria developed by the Secretary of Natural and Economic Resources to show property lines of the oil terminal facility and location of nearby watercourses or bodies of water as specified by the Secretary; and
- (4) Summary of present and proposed procedures, if any, for prevention of oil spills.

The owner or operator of any oil terminal facility which begins operation subsequent to the initial registration date specified in this section shall secure a registration certificate no later than 30 days after beginning operations. (1973, c. 534, s. 1.)

§ 143-215.97. Recommendations; regulations.—(a) The Secretary of Natural and Economic Resources shall present recommended further legislation concerning oil pollution to the General Assembly by February 1, 1974. Such rec-

ommended legislation may include provisions (i) designating or creating a State agency to regulate oil terminal facilities; (ii) specifying the legal responsibility of oil terminal facilities for prevention of oil spills, and for related measures to protect the public interest; (iii) creating a system of licensing of oil terminal facilities, or such alternative measures as the Secretary deems needful to protect the public interest; and (iv) such other provisions as the Secretary shall deem necessary and appropriate.

(b) The Secretary of Natural and Economic Resources may adopt and modify from time to time rules and regulations consistent with this Part to implement the provisions of this Part. All such rules and regulations and modifications thereof, shall be filed with the Secretary of State as required by Article 18 of Chapter 143 of the General Statutes. (1973, c. 534, s. 1.)

§ 143-215.98. Violations. — Any person who shall be adjudged to have violated any provision of this Part or any rule or regulation of the Secretary of Natural and Economic Resources adopted hereunder shall be guilty of a misdemeanor, punishable upon conviction by a fine of not exceeding fifty dollars (\$50.00) or by imprisonment for not exceeding 30 days or by both such fine and imprisonment. (1973, c. 534, s. 1.)

§ 143-215.99. Oil refinery permits. — No facility which is used or capable of being used for the purpose of refining oil shall be initiated or constructed prior to July 1, 1974, without a permit from the Board. The Board shall deny such permit upon finding:

- (1) That the installation will have substantial adverse effects on wildlife or on fresh water, estuarine or marine fisheries;
- (2) That the operation of the installation will violate standards of air or water quality promulgated or administered by the Board;
- (3) That the installation will have a substantial adverse effect on a publicly owned park, forest or recreation area; or
- (4) That the installation will have substantial adverse effects on the public health, safety or welfare that are not outweighed by the benefits of the installation.

In the absence of such findings, a permit shall be granted. The Board may adopt rules and regulations prescribing procedures to be followed in connection with such permits. (1973, c. 534, s. 1.)

§§ 143-215.100 to 143-215.104: Reserved for future codification purposes.

ARTICLE 21B.

Air Pollution Control.

§ 143-215.105. Declaration of policy; definitions. — The declaration of public policy set forth in G.S. 143-211 and the definitions set forth in G.S. 143-213, applicable to the control and abatement of air pollution, shall be applicable to this Article. (1973, c. 821, s. 6.)

Editor's Note. — Session Laws 1973, c. 1973. Session Laws 1973, c. 821, s. 7, contains a severability clause.

§ 143-215.106. Administration of air quality program. — The air quality program of the State of North Carolina shall be administered by the Department of Natural and Economic Resources under the rules, regulations and policies of the North Carolina Board of Water and Air Resources created pursuant to G.S. 143-214. The Board shall review and have general oversight and

supervision over the creation and administration of local air pollution control programs authorized by this Article. Public hearings on the adoption by the Board of air quality standards, emission control standards, and classifications for air contaminant sources as well as any proposed revisions in such standards and classifications shall be conducted in accordance with the procedure set forth in subsections (e)(1), (e)(2) and (e)(3) of G.S. 143-214.1. (1973, c. 821, s. 6.)

§ 143-215.107. Air quality standards and classifications.—(a) The Board is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Board deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To develop and adopt classifications for use in classifying air contaminant sources, which in the judgment of the Board may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Any person operating or responsible for the operation of air contaminant sources of any class for which the Board requires reporting shall make reports containing such information as may be required by the Board concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt such emission control standards as in the judgment of the Board may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Board.
- (6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(b) Criteria for Standards.—In developing air quality and emission control standards, the Board shall recognize varying local conditions and requirements and may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article and Article 21.

(c) Proposed Adoption of Standards and Classifications.—Prior to the adoption by the Board of air quality standards, emission control standards and classifications for air contaminant sources, and prior to any modification of any such actions previously taken, the Board shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the procedure set forth in subsections (e)(1), (e)(2), and (e)(3) of G.S. 143-214.1.

(d) Final Adoption of Air Quality Standards, Emission Control Standards and Classifications for Air Contaminant Sources.—Upon completion of hearings and consideration of submitted evidence and arguments concerning any proposed action by the Board with respect to the adoption of air quality standards, emission control standards and classifications for air contaminant sources, the Board shall adopt its final action with respect thereto and shall publish such final action as a part of its official regulations. When final action has been adopted and is published with respect to the aforesaid standards and classifications, the Board shall likewise publish as a part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.108 and G.S. 143-215.109 to persons within the State as a whole or within any designated area of the State.

(e) Board's Powers to Modify or Revoke.—The Board is hereby empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part, any such modification or revocation, however, to be subject to the procedural requirements of this Article and Article 21. (1973, c. 821, s. 6.)

§ 143-215.108. Control of sources of air pollution; permits required.—(a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Board a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Establish or operate any air contaminant source;
- (2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;
- (4) Enter into a contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(b) The Board shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air of the State from any additional or enlarged sources.

The Board shall have the power:

- (1) To grant and renew a permit with such conditions attached as the Board believes necessary to achieve the purposes of this section;
- (2) To grant and renew any temporary permit for such period of time as the Board shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit; and
- (6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing.

The Board shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Board to take action on an application for a permit within 90 days after all data, plans, specifications and other required information have been furnished by the applicant shall be deemed as approval of such application.

Any person whose application for a permit or renewal thereof is denied or is granted subject to conditions which are unacceptable to such person or whose permit is modified or revoked shall have the right to a hearing before the Board upon making demand therefor within 30 days following the giving of notice by the Board as to its decision upon such application. Unless such a demand for a hearing is made, the decision of the Board on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Board. (1973, c. 821, s. 6.)

§ 143-215.109. Control of complex sources.—(a) The Board shall develop and adopt regulations establishing criteria for controlling the effects of complex sources on air quality. The regulations shall set forth such basic minimum criteria or standards under which the Board shall approve or disapprove any such construction or modification. The regulations shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources.

(b) If the Board shall determine that the construction or modification of any complex sources will result in a violation of ambient air quality standards or interfere with the attainment of such standards in any area where an air pollution abatement control program has been established, the Board shall have authority to disapprove such construction or modification or to approve such construction or modification under such conditions as the Board shall deem necessary or appropriate.

(c) In adopting the regulations required by this section and in applying such regulations to any complex source, the Board may conduct such public hearings as it, in its sole discretion, shall deem appropriate, after such notice and pursuant to such procedures as the Board shall establish in its rules of procedure. (1973, c. 821, s. 6.)

§ 143-215.110. Special orders.—(a) Issuance.—The Board is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to time to modify or revoke) a special order or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Board deems necessary and feasible in order to alleviate or eliminate such pollution. The Board is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the air, and such document shall have the same force and effect as a special order of the Board issued pursuant to hearing.

(b) Procedure.—No special order shall be issued by the Board (unless issued upon the consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.111 and in any applicable rules of procedure of the Board. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals.—Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Board shall be final and binding.

(d) Effect of Compliance.—Any person who installs an air-cleaning device for purpose of alleviating or eliminating air pollution in compliance with the terms of, or as result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Board or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for a period to be fixed by the Board or court as it shall deem fair and reasonable in the light of all the circumstances after the date such special order, consent special order, assurance of voluntary compliance, other document or decision, or the conditions of such permit become finally effective, if:

- (1) The air-cleaning devices result in the elimination or alleviation of air pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance, or other document or decision and complies with any other terms thereof; and
- (2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1973, c. 821, s. 6.)

Editor's Note.—It would seem that the reference in subsection (b) of this section to § 143-215.111 should be to § 143-215.113.

§ 143-215.111. General powers of Board; auxiliary powers.—In addition to the specific powers prescribed elsewhere in this Article and the applicable general powers prescribed in G.S. 143-215.3, and for the purpose of carrying out its duties, the Board shall have the power:

- (1) To make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of the State and the several areas thereof, and make recommendations to the General Assembly and other appropriate public and private bodies for the control of such air contaminants.
- (2) To consult, upon request, with any person proposing to construct, install, or otherwise acquire an air pollution source or air-cleaning device for the control of air contaminants concerning the efficacy of such device, or the air problem which may be related to such source, or device; provided, however, that nothing in any such consultation shall be construed to relieve any person from compliance with this Article and Article 21, rules and regulations adopted pursuant thereto, or any other provision of law.
- (3) To encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide such local units technical and consultative assistance to the maximum extent possible. (1973, c. 821, s. 6.)

§ 143-215.112. Local air pollution control programs.—(a) The Board is authorized and directed to review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and Article 21 and any applicable standards and rules and regulations adopted pursuant thereto. The Board shall certify any local program which:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article and Article 21, and the standards and rules and regulations issued pursuant thereto; provided, however, the Board upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Board;
- (2) Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;
- (3) Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and
- (4) Is approved by the Board as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

(b) No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of this section and is so certified by the Board.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Board of Water and Air Resources, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

- a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
- b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
- c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
- d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Board of Water and Air Resources; and administration of such rules, regulations and standards in accordance with provisions of this section.
- e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;
- f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

(2) Subject to the approval of the Board of Water and Air Resources as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

- a. Establishing a program under the administration of the duly elected governing body of the county or municipality;
- b. Appointing an air pollution control board consisting of not less

than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;

- c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and
- d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

(3) If the Board finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Board may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Board of Water and Air Resources, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Board of Water and Air Resources for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized,

through appropriate written agreement, to designate a local health department as its administrative agent.

(4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Board of Water and Air Resources and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

(d) (1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body shall constitute a misdemeanor, punishable as provided in G.S. 143-215.114(b).

(2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article and Article 21 for any violation of same.

(3) In addition, each governing body is authorized to expend tax funds, non-tax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

(4) Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of Chapter 143, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

(e) (1) If the Board has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirement of this Article, the Board shall, upon due notice, conduct a hearing on the matter.

(2) If, after such hearing, the Board determines that an existing local air pollution control program or one which has been certified by the Board is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Ar-

ticle, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

- (3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Board shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article and Article 21. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.
- (4) If the Board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this subdivision may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.
- (5) Any municipality or county in which the Board administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Board, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Board.
- (6) Nothing in this Article and Article 21 shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article and Article 21 for certification by the Board as an approved local air pollution control program. Any certification required from the Board shall be deemed granted unless the Board takes specific action to the contrary.
- (7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Board. The Board shall approve any such application if it is consistent with this Article, Article 21 and other applicable requirements of law.
- (8) Notwithstanding any other provision of this section, if the Board determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Board, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary. (1973, c. 821, s. 6.)

§ 143-215.113. General provisions as to procedure; appeals.—All hearings provided for in this Article to be conducted by the Board shall be in accordance with the provisions of G.S. 143-215.4. Appeals from any final order or decision of the Board shall be pursuant to the provisions of G.S. 143-215.5. (1973, c. 821, s. 6.)

§ 143-215.114. Enforcement procedures.—(a) Civil Penalties.—

- (1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed against any person who:
 - a. Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;
 - b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;
 - c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;
 - d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article;
 - e. Refuses access to the Board of [or] its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article; or
 - f. Violates any duly adopted regulation of the Board implementing the provisions of this Article.
- (2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Board may assess a penalty not to exceed five thousand dollars (\$5,000) per day for so long as the violation continues.
- (3) The Board, or, if authorized by the Board, the Department of Natural and Economic Resources may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural and Economic Resources within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Board may specify, the Board may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Board's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.

(b) Criminal Penalties.—

- (1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any regulation of the Board implementing any of the said section, shall be guilty of a misdemeanor punishable by a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment not to exceed six months, or by both.
- (2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article and Article 21, or regulations of the Board implementing this Article and Article 21, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article and Article 21 or regulations of the Board implementing this Article and Article 21, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.
- (3) Any person convicted of an offense under either subdivision (1) or sub-

division (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.

(4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) **Injunctive Relief.**—Whenever the Department of Natural and Economic Resources has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Board implementing the provisions of this Article, the Department of Natural and Economic Resources, either before or after the institution of any other action or proceeding authorized by this Article and Article 21, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural and Economic Resources for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the violation occurred or may occur. Upon a determination by the court that the alleged violation of the provisions of this Article and Article 21 or the regulation of the Board has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1973, c. 821, s. 6.)

ARTICLE 22.

State Ports Authority.

§ 143-216. Creation of Authority; membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

State Ports Authority Is Carrier under Federal Railway Labor Act. — See *International Longshoremen's Ass'n v. North Carolina Ports Authority*, 463 F.2d 1 (4th Cir. 1972).

Applied in *International Longshoremen's Ass'n v. North Carolina State Ports Authority*, 332 F. Supp. 95 (E.D.N.C. 1971).

§ 143-217. Purposes of Authority.

Authority an Instrumentality and Agency of State. — The Authority created by this Article is an instrumentality and agency of the State, created and empow-

ered to accomplish a public purpose. *Nat Harrison Associates v. North Carolina State Ports Authority*, 280 N.C. 251, 185 S.E.2d 793 (1972).

§ 143-220. Power of eminent domain. — For the acquiring of rights-of-way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt

line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State, or by the Board of Transportation, or by railroad corporations, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "North Carolina State Highway Department."

ARTICLE 23.

Armories.

§ 143-229. Definitions.—The terms used in this Article mean:

(3) Department: The Department of Military and Veterans Affairs created by this Article.

(1973, c. 620, s. 9.)

Cross Reference.—As to creation of the Department of Military and Veterans Affairs, see § 143B-246.

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department" for "Commission" and "Depart-

ment of Military and Veterans Affairs" for "Armory Commission" in subdivision (3).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (3) are set out.

§§ 143-230, 143-231: Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973.

Cross Reference.—As to the Department of Military and Veterans Affairs, see §§ 143B-246 through 143B-251.

§ 143-232. Authority to foster development of armories and facilities.

Editor's Note. — Session Laws 1973, c. 620, s. 9, effective July 1, 1973, amends this section by substituting "Department of

Military and Veterans Affairs" for "Commission."

§ 143-233. Powers of Department specified.

Editor's Note.—Session Laws 1973, c. 620, s. 9, effective July 1, 1973, amends this section by substituting "Department

of Military and Veterans Affairs" for "Commission."

§ 143-234. Power to acquire land, make contracts, etc.—In furtherance of the duties, power, and authority given herein, the Department of Military and Veterans Affairs is authorized and empowered within the limitations of G.S. 143-341 to accept and hold title to real property in the name of the State of North Carolina, and to enter in contracts and do any and all things necessary to carry out any statewide programs for the acquisition of armories and armory sites, the construction and maintenance of armories, and to provide facilities which may be considered by it as necessary for any unit and which may be authorized by act of Congress or otherwise. (1947, c. 1010, s. 6; 1973, c. 620, s. 9.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "De-

partment of Military and Veterans Af-

fairs" for "Commission," inserted "within the limitations of G.S. 143-341" and made certain minor changes in wording.

ARTICLE 24.*Wildlife Resources Commission.*

§ 143-241. Appointment and terms of office of Commission members; filling of vacancies.—The terms of office of the members of the North Carolina Wildlife Resources Commission who are now serving as members from the State at large shall expire June 30, 1965. The terms of the remaining nine incumbent members of said Commission shall not expire until the end of the terms for which they were appointed.

On the first day of July, 1965 and thereafter, the Governor shall appoint members of the North Carolina Wildlife Resources Commission from the several geographical districts set forth in G.S. 143-240 as follows:

On July 1, 1965, one from each of districts two, five and eight to serve six years each;

On July 1, 1967, one member from each of districts three, six and nine, to serve terms of six years each;

On July 1, 1969, one member from each of districts one, four and seven, to serve terms of six years each.

Thereafter as the terms of office of the members of the Commission from the several districts expire, their successors shall be appointed for terms of six years each.

Vacancies occurring through expiration of terms of the members of the Commission shall be filled by appointment by the Governor from a list of five names from each wildlife district, recommended and submitted by the adult interested citizens of each respective district. When the term of a member expires, the Director or his designee shall call a meeting of the adult interested citizens in that district not later than 60 days prior to the expiration of such member's term. Such meetings shall be held as near to the geographic center of the district as possible and in a public building. Notice of the meeting shall be given by publication once each week for four successive weeks, the fourth notice appearing at least 10 days prior to the meeting, in a newspaper having general circulation in the district. In addition, notice of the meeting shall be posted at the courthouse door of each county in the district at least 30 days prior to said meeting. At such meeting, the adult interested citizens in attendance shall select, and the Director shall submit to the Governor, a list of five residents and citizens of the district who are well informed on the subject of wildlife conservation and restoration. The Governor shall appoint a successor to the member whose term is about to expire within 60 days following the submission to him by the Director of the list hereinabove referred to and in no event later than July 1.

Meetings of adult interested citizens held pursuant to this section shall be conducted pursuant to Robert's Rules of Order. When the meeting has been called to order, any adult interested citizen may place in nomination the name of an adult resident citizen of the respective district to be considered for nomination. After the nominations have ceased, each adult interested citizen present may vote for one of the nominees. The five receiving the most votes shall be submitted to the Governor.

"Adult interested citizen" as used in this section means any adult interested citizen who is a resident of any county within the district. All members appointed pursuant to this section shall serve until their successors are appointed and qualified. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3; 1973, c. 825, s. 2.)

Editor's Note.—

The 1973 amendment substituted the present last three paragraphs of the section for the former last paragraph, which provided that members appointed pursuant to

this section should serve until their successors were appointed and qualified and that any member might be removed by the Governor for cause.

§ 143-242. Vacancies by death, resignation or otherwise.—Vacancies on the Commission occurring by reason of death, resignation or otherwise for an unexpired term of a duration of more than one year shall be filled as provided in G.S. 143-241. Vacancies on the Commission by reason of death, resignation or otherwise for an unexpired term of one year or less shall be filled by the Governor by appointment of an adult resident citizen from the appropriate district.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance. (1947, c. 263, s. 6; 1973, c. 825, s. 3.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 143-243. Organization of the Commission; election of officers; Robert's Rules of Order.—The Commission shall hold at least two meetings annually in the City of Raleigh, one in January and one in July, and five members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times and places within the State as may be deemed necessary for the efficient transaction of the business of the Commission. The Commission may hold additional or special meetings at any time at the call of the chairman or on call of any three members of the Commission. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Article, and shall have an official seal, which shall be judicially noticed. At the first meeting of the Commission, which shall be held in the City of Raleigh on or before the first day of July, 1947, it shall elect one of its members as chairman and one of its members as vice-chairman; thereafter, at the meeting held in January, 1948, and annually thereafter, the Commission shall elect one of its members as chairman and one of its members as vice-chairman; such officers to hold office for a period of one year. Meetings of the Commission shall be conducted pursuant to Robert's Rules of Order. (1947, c. 263, s. 7; 1973, c. 825, s. 4.)

Editor's Note. — The 1973 amendment added the last sentence.

ARTICLE 25.

National Park, Parkway and Forests Development Commission.

§ 143-255. Commission created; members appointed.—There is hereby created a commission to be known as the North Carolina National Park, Parkway and Forests Development Commission, which Commission, in addition to the duties hereafter specified, shall succeed to the general functions heretofore exercised by those commissions and agencies referred to in former G.S. 113-78 to 113-81 and in repealed Chapter 48 of the Public Laws of 1927. The Commission hereby created shall consist of seven members, one member of which shall be a resident of Buncombe county, one member a resident of Haywood county, one member a resident of Jackson county, one member a resident of Swain county, three members residents of counties adjacent to or affected by the development or completion of the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala national forests. The chairman of the Board of Transportation and the Director of the Department of Conservation and Development, shall be ex officio members of the Commission. There shall be transferred to the Commission herein created all records, documents, accounts, funds, appropriations and all other properties and interests whatsoever heretofore owned or held by any commission or agency under the provisions of Article 6 of Chapter 113 of the General Statutes of North Carolina, as amended, or Chapter 48 of the Public Laws of 1927, as amended, and the Commission herein created is hereby authorized to receive, hold, use, convey and expend the same, subject to the approval of the Director of the

Budget, and in furtherance of the purposes of this Article. (1947, c. 422, s. 3; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transporta-

tion" for "State Highway Commission" in the third sentence.

§ 143-258. Duties of the Commission.—The Commission shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah national forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway, or the Pisgah or Nantahala national forests. It shall be the duty of the Commission to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissions and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas, but shall not in any manner take over or supplant these agencies in their work in this area, except in so far as expressly provided in this article in respect to those commissions and agencies provided for in Article 6 of Chapter 113 of the General Statutes of North Carolina, as amended, as Chapter 48 of the Public Laws of 1927, as amended. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the National Park Service of the federal government, and the Board of Transportation. (1947, c. 422, s. 6; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transporta-

tion" for "North Carolina State Highway Commission" at the end of the section.

§ 143-259. The Commission to make reports.—The Commission shall make a biennial report to the Governor covering its work up to January 1st preceding each session of the General Assembly. It shall also file any such suggestions or recommendations as it deems proper with the Department of Conservation and Development and the Board of Transportation in respect to such matters as might be of interest to, or affect such Department or Board of Transportation. (1947, c. 422, s. 7; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transporta-

tion" for "State Highway Commission" in the second sentence.

ARTICLE 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.6. Short title.—This Article shall be known and may be cited as the State Nature and Historic Preserve Dedication Act. (1973, c. 443, s. 1.)

Editor's Note. — Session Laws 1973, c. 443, s. 5, makes the act effective July 1, 1973.

§ 143-260.7. Purpose.—It is the purpose of this Article to prescribe the conditions and procedures under which properties may be specially dedicated for the purposes enumerated by Article XIV, Sec. 5 of the North Carolina Constitution ("Conservation of Natural Resources"), accepted by the General Assembly for said purposes, and thereby constituted part of the State Nature and Historic Preserve. (1973, c. 443, s. 2.)

§ 143-260.8. Procedures.—(a) Within the meaning of this section:

- (1) "Local governing body" means, as the case may be, the board of commissioners of a county, the city council (or equivalent legislative body) of a city, or the board of aldermen or board of commissioners (or equivalent legislative body) of a town.
- (2) "Local government" means a county, city or town.
- (3) "Properties" include any properties or interest in properties acquired by purchase or gift.

(b) The Council of State may petition the General Assembly to adopt a resolution pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting any properties owned by the State of North Carolina (or proposed for gift to or purchase by the State) and designated in said petition for inclusion in the State Nature and Historic Preserve.

(c) The governing body of any local government, or any combination of two or more such bodies may petition the General Assembly to adopt a resolution pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting any properties owned by said local government (or proposed for gift to or purchase by said local government) and designated in said petition for inclusion in the State Nature and Historic Preserve.

(d) The petition referred to in subsections (a) and (b) of this section shall identify the properties sought to be included in the Preserve. The General Assembly may then by joint resolution accept the designated properties in the Preserve and adoption of said resolution by the General Assembly shall constitute the special dedication and acceptance of the designated properties in the State Nature and Historic Preserve contemplated by Article XIV, Sec. 5 of the North Carolina Constitution.

(e) In order to provide accessible information to the public concerning the State Nature and Historic Preserve, every resolution accepting properties in the Preserve shall be codified in the General Statutes. A certified copy of every resolution accepting properties in the Preserve shall be transmitted by the Secretary of State to the register of deeds in each county wherein said properties, or any part of them, are located, for filing and indexing in the grantor index.

(f) This Article shall constitute an exclusive procedure only for placing properties in the State Nature and Historic Preserve, and shall not preclude the dedication of properties by other means for purposes identical or similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution.

(g) It is the intent of this Article to complement any applicable provisions of federal and State law and regulations relating to dedication or acceptance of properties for purposes similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution. The Council of State is hereby authorized to adopt

rules and regulations to implement the provisions of this Article, including rules and regulations consistent with this Article to comport with applicable federal and State law and regulations. A copy of this Article, and of any such rules or regulations affecting properties owned by local governments shall be filed by the Council of State with the chairman of the local governing body of every county, city and town within 30 days after ratification or adoption as the case may be. (1973, c. 443, s. 3.)

§ 143-260.9. Dedication shall not affect maintenance and improvement of existing structures or facilities.—The dedication of property to the State Nature and Historic Preserve shall not prevent the administering State agency or local governing body from carrying out normal maintenance and improvement of existing structures or facilities that are appropriate to, and consistent with, the purpose for which the property in question was obtained by the State agency or local governing body. (1973, c. 443, s. 4.)

ARTICLE 27.

Settlement of Affairs of Certain Inoperative Boards and Agencies.

§ 143-268. Official records turned over to Department of Cultural Resources; conversion of other assets into cash; allocation of assets to State agency or department.

Editor's Note.—Session Laws, c. 476, s. 48, effective July 1, 1973, substitutes "Department of Archives and History" throughout the General Statutes.

ARTICLE 29.

Commission to Study the Care of the Aged and Handicapped.

§ 143-280. Membership.—The Commission shall consist of one member from the North Carolina Department of Human Resources, one member from the Department of Human Resources, one member from the Department of Human Resources, one member from the boards of county commissioners, one county superintendent of social services, one local health director, one clerk of the superior court. (1949, c. 1211, s. 2; 1957, c. 1357, s. 12; 1963, c. 1166, s. 10; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health," "State Department of Mental Health," and

"State Board of Public Welfare" throughout the General Statutes. The 1973 act has been literally complied with in the section as set out above.

ARTICLE 29A.

Governor's Council on Employment of the Handicapped.

§ 143-283.1. Short title.

Cross Reference. — As to the organization of the Governor's Council on Employment of the Handicapped, see §§ 143B-184, 143B-185.

Editor's Note.—

Session Laws 1973, c. 476, s. 179, effective July 1, 1973, amends this section by substituting "Governor's Council" for "Governor's Committee."

§ 143-283.2. Purpose of Article; cooperation with President's Committee.

Editor's Note. — Session Laws 1973, c. 476, s. 179, effective July 1, 1973, amends this section by substituting "Governor's Council" for "Governor's Committee."

§ 143-283.3. Celebration of National Employ the Physically Handicapped Week.

Editor's Note. — Session Laws 1973, c. 476, s. 179, effective July 1, 1973, amends this section by substituting "Governor's Council" for "Governor's Committee."

§§ 143-283.4 to 143-283.6: Repealed by Session Laws 1973, c. 476, s. 179, effective July 1, 1973.

§ 143-283.7. Funds, expenses and gifts; reports. — There is hereby created in the State treasury a special revolving fund to be known as "Employment of the Handicapped Revolving Fund." The fund shall consist of all moneys received by the Department of Human Resources, or in behalf of the Department from the United States, any federal or State agency or institution, gifts, contributions, donations and requests [bequests], but not excluding any other source of revenue for the purpose of promoting the employment and rehabilitation of handicapped citizens of North Carolina. The Department of Human Resources may use said revolving fund to pay the salaries, and general expenses of the administrative office, personnel, materials, supplies, equipment, travel; provide awards, citations, scholarships, but not excluding other purposes for the promoting of the employment and rehabilitation of handicapped citizens. All expenditures from said fund shall be subject to the provisions of the Executive Budget Act.

Any moneys remaining in said revolving fund at the end of any fiscal year or biennium shall not revert to the general fund or any other fund but shall continue to remain in said revolving fund to be expended for the purposes of this Article.

The Department of Human Resources shall accept, hold in trust, and authorize the use of any grant or devise of land, or any donation or bequests of money or other personal property made to the Department so long as the terms of the grant, donation, bequest or will are carried out. The Department of Human Resources may invest and reinvest any funds and money, lease, or sell any real or personal property, and invest the proceeds for the purpose of promoting the employment and rehabilitation of the handicapped unless prohibited by the terms of the grant, donation, bequest, gift, or will. If, due to circumstances, the requests of the person or persons making the grant, donation, bequest, gift, or will, cannot be carried out, the Department of Human Resources shall have the authority to use the remainder thereof for the purpose of this Article. Said funds shall be deposited in the revolving fund to carry out the provisions of this Article. Such gifts, donations, bequests, or grants shall be exempt for tax purposes. The Department shall report annually to the Governor all moneys and properties received and expended by virtue of this section.

All funds and properties in the hands of the Governor's Executive Committee on July 1, 1973, shall be transferred to the Department of Human Resources for use in furtherance of the purposes of this Article. (1961, c. 981; 1973, c. 476, s. 179.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote this section.

§ 143-283.8. Governor's Council nonpartisan and nonprofit.

Editor's Note. — Session Laws 1973, c. 476, s. 179, effective July 1, 1973, amends this section by substituting "Governor's Council" for "Governor's Committee."

§§ 143-283.9, 143-283.10: Repealed by Session Laws 1973, c. 476, s. 179, effective July 1, 1973.

ARTICLE 29B.

Governor's Coordinating Council on Aging.

§§ 143-283.11 to 143-283.23: Repealed by Session Laws 1973, c. 476, s. 173, effective July 1, 1973.

Cross Reference.—For present provisions as to the Governor's Coordinating Council on Aging, see §§ 143B-180, 143B-181.

ARTICLE 29C.

Youth Councils Act.

§ 143-283.27. The Advisory Board.

(c) The members of the Board who are not officers or employees of the State shall receive for their services the per diem and allowances prescribed by G.S. 138-5. (1969, c. 404, s. 4; 1973, c. 797, s. 2.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added subsection (c). changed by the amendment, only subsection (c) is set out.

As the rest of the section was not

§ 143-287.31: Repealed by Session Laws 1973, c. 797, s. 1, effective July 1, 1973.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages.—The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of twenty thousand dollars (\$20,000). (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in the first sentence.

Strict Construction.—

Since the Tort Claims Act is in derogation of sovereign immunity it must be strictly construed and the terms must be

strictly adhered to. Etheridge v. Graham, 14 N.C. App. 551, 188 S.E.2d 551 (1972).

The determination of negligence, proximate cause, etc.—

Negligence and contributory negligence are mixed questions of law and fact and, upon appeal, the reviewing court must determine whether facts found by the Industrial Commission support its conclusion of

contributory negligence. *Barney v. North Carolina State Hwy. Comm'n*, 282 N.C. 278, 192 S.E.2d 273 (1972).

Negligence, etc., Determined under Same Rules as Applicable to Private Litigation.

—Negligence, contributory negligence and proximate cause, as well as the applicability of the doctrine of respondeat superior, are to be determined under the same rules as those applicable to litigation between private individuals. *Barney v. North Carolina State Hwy. Comm'n*, 282 N.C. 278, 192 S.E.2d 273 (1972).

And Not for Negligent Omissions.—

The Tort Claims Act, is applicable only to negligent acts of State employees and is not applicable to negligent omissions. *Etheridge v. Graham*, 14 N.C. App. 551, 188 S.E.2d 551 (1972).

Finding of Fact, etc.—

A finding of fact on appeal by the Industrial Commission, other than a jurisdictional finding, is conclusive if there is any competent evidence in the record to support it. *Barney v. North Carolina State Hwy. Comm'n*, 282 N.C. 278, 192 S.E.2d 273 (1972).

§ 143-293. Appeals to Court of Appeals.

Inquiry of Reviewing Court, etc.—

In accord with 1971 Cum. Supp. See *Stroud v. North Carolina Mem. Hosp.*, 15 N.C. App. 592, 190 S.E.2d 392 (1972).

Finding of Commission Conclusive, etc.—

Findings of fact of the Industrial Com-

mission, if supported by any competent evidence, are conclusive on appeal even though there is evidence which would support a contrary finding. *Bullman v. North Carolina State Hwy. Comm'n*, 18 N.C. App. 94, 195 S.E.2d 803 (1973).

Superior Court Lacked Jurisdiction in Action against Department of Agriculture.

—The superior court had no jurisdiction over an action for damages against the Department of Agriculture based on the failure of the Commissioner of Agriculture to require a soybean dealer to obtain a permit and to furnish bond, since jurisdiction of tort claims against a State agency has been vested in the Industrial Commission. *Etheridge v. Graham*, 14 N.C. App. 551, 188 S.E.2d 551 (1972).

Applied in Cogburn v. North Carolina State Hwy. Comm'n, 14 N.C. App. 544, 188 S.E.2d 553 (1972); *Stroud v. North Carolina Mem. Hosp.*, 15 N.C. App. 592, 190 S.E.2d 392 (1972); *Bullman v. North Carolina State Hwy. Comm'n*, 18 N.C. App. 94, 195 S.E.2d 803 (1973).

Stated in *Steelman v. City of New Bern*, 279 N.C. 589, 184 S.E.2d 239 (1971).

§ 143-295. Settlement of claims.—(a) Any claim hereinafter filed pursuant to this Article with the Industrial Commission may be settled upon agreement between the claimant and the Attorney General without a formal hearing, subject only to approval by the Industrial Commission.

(b) Transfer of title of any motor vehicle acquired in behalf of the State in settlement of a claim pursuant to the provisions of this Article may be transferred by the Attorney General in the same manner as title is transferred by an insurance company under the provisions of G.S. 20-75. (1951, c. 1059, s. 5; 1971, c. 1103, s. 1; 1973, c. 699.)

Editor's Note.—

The 1973 amendment rewrote the former

provisions of this section as subsection (a) and added subsection (b).

§ 143-299. Limitation on claims.—All claims against any and all State departments, institutions, and agencies shall henceforth be forever barred unless a claim be filed with the Industrial Commission within three years after the accrual of such claim, or if death results from the accident, the claim for wrongful death shall be forever barred unless a claim be filed by the personal representative of the deceased with the Industrial Commission within two years after such death. (1951, c. 1059, s. 11; 1973, c. 659.)

Editor's Note.— The 1973 amendment deleted an exception clause as to claims enumerated in Session Laws 1951, c. 1059, s. 13, inserted "henceforth," substituted

"three years after the accrual of such claim, or" for "two years after the accident giving rise to the injury and damage, and" and inserted "of the deceased."

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.

Basis for Conclusion of Contributory Negligence. — A conclusion of negligence or contributory negligence may not be drawn in favor of the party having the burden of proof upon no basis other than speculation and unproved possibilities. *Barney v. North Carolina State Hwy. Comm'n*, 282 N.C. 278, 192 S.E.2d 273 (1972).

Negligence and contributory negligence are mixed questions of law and fact and, upon appeal, the reviewing court must determine whether facts found by the Industrial Commission support its conclusion of contributory negligence. *Barney v. North Carolina State Hwy. Comm'n*, 282 N.C. 278, 192 S.E.2d 273 (1972).

§ 143-300. Rules and regulations of Industrial Commission; destruction of records. — The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this Article. When any case or claim under this Article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the discretion of the Industrial Commission with and by the authorization of the Department of Cultural Resources, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 18 years. (1951, c. 1059, s. 12; 1957, c. 311; 1971, c. 1231, s. 1; 1973, c. 476, s. 48.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural

Resources" for "North Carolina Department of Archives and History."

ARTICLE 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§ 143-306. Definitions.

Editor's Note. —

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

Article Will Not Support Attack on Constitutionality of Parole Board Statute. — The provisions of this Article are inappropriate to initiate an attack upon the constitutionality of a statute fixing the powers and duties of the Board of Paroles. The question of the constitutionality of a statute is not for administrative boards but for the judicial branch. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Court Review of Suspensions and Exclusions Limited. — Court review of suspensions and exclusions, regardless of where the child lives, would appear to be limited by § 115-165 to the Superior Court of Wake County under this Article of the Administrative Procedure Act. *Givens v. Poe*, 346 F. Supp. 202 (W.D.N.C. 1972).

Termination of Employment of Superintendent of Schools Reviewable. — The decision of the Wayne County Board of Education terminating the employment of the superintendent of schools and declaring the office vacant is subject to review under this Article. Although the section providing for the removal of school superintendents, § 115-42, contains a proviso that such "superintendent shall have the right to try his title to office in the courts of the State," the statute is silent as to the procedure and the scope of review contemplated. The procedure and scope of review shall be as provided by this Article. *James v. Wayne County Bd. of Educ.*, 15 N.C. App. 531, 190 S.E.2d 224 (1972).

Applied in *State ex rel. Banking Comm'n v. Lucama-Kenly Bank*, 17 N.C. App. 557, 195 S.E.2d 69 (1973).

§ 143-307. Right to judicial review.

Editor's Note. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971). For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

Meaning of "Person Aggrieved". —

In accord with original. See *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

Cited in *Glusman v. Trustees of Univ. of N.C.*, 281 N.C. 629, 190 S.E.2d 213 (1972).

§ 143-308. Right to judicial intervention when agency unreasonably delays decision.

Editor's Note. — For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-309. Manner of seeking review; time for filing petition; waiver.

Applied in James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

§ 143-310. Contents of petition; copies served on all parties.

Purpose of Statute Necessitates Liberal Construction. — The primary purpose of the statute is to confer the right of review and the statute should be liberally construed to

preserve and effectuate that right. James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

§ 143-312. Stay of board order.

Cited in James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

§ 143-315. Scope of review; power of court in disposing of case.

Editor's Note. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

Review of Order of State Board, etc. —

It is only when the actions of the State Board of Assessment are found to be arbitrary and capricious that courts will interfere with tax assessments because of asserted violations of the due process clause. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Showing Necessary to Obtain Relief From Valuations by State Board of Assessment. — In order to obtain relief from valuations upon their property by the State Board of Assessment, appellant electric membership corporations must show that the methods used in determining true value were illegal and arbitrary, and that appellants were substantially injured by a resulting excessive valuation of their property. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

That Board's Official Acts Presumed Made in Good Faith, etc. — The members

of the State Board of Assessment are public officers, and the Board's official acts are presumed to be made in good faith and in accordance with law; the burden is upon the party asserting otherwise to overcome such presumptions by competent evidence to the contrary. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Where on appeal the only evidence offered by appellant electric membership corporations as to the value of their property was their local tax listings, these declarations alone did not have sufficient probative force to overcome the presumption of correctness and regularity accompanying the Board's actions. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Applied in In re McLean Trucking Co., 281 N.C. 375, 189 S.E.2d 194 (1972); In re King, 281 N.C. 533, 189 S.E.2d 158 (1972); In re Moss Trucking Co., 16 N.C. App. 261, 191 S.E.2d 919 (1972).

Cited in State ex rel. Banking Comm'n v. Lucama-Kenly Bank, 17 N.C. App. 557, 195 S.E.2d 69 (1973).

§ 143-316. Appeal to Appellate Division; obtaining stay of court's decision.

Cited in Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972).

ARTICLE 33A.

*Rules of Evidence in Administrative Proceedings before State Agencies.***§ 143-317. Definitions.**

Editor's Note. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

Applicability to Political Subdivisions Not Decided. — The court found it unnecessary to decide whether the provisions of this Article are applicable to political subdivisions of the State, including cities and towns. *Carter v. Town of Chapel Hill*, 14 N.C. App. 93, 187 S.E.2d 588 (1972).

§ 143-318. Rules of evidence; official notice.

Editor's Note. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

This section does not apply to county authorities. In re McLean Trucking Co., 281 N.C. 375, 189 S.E.2d 194 (1972).

Section Governs Admissibility in Proceeding before State Board of Assessors. — Appraisals by county tax appraisers are not required to be based upon evidence competent in a judicial proceeding. However, in a proceeding before the State Board of Assessment upon an appeal from the action of the county taxing authorities, this section governs the admissibility of evidence. In re McLean Trucking Co., 281 N.C. 375, 189 S.E.2d 194 (1972).

Burden of Proof. — This section requires the State agencies and boards charged with the duty of finding facts to observe the rules of evidence "as applied in the superior and district courts." And except in extraordinary cases, the burden of proof is by

Boards of Aldermen Excepted. — Assuming that this Article does apply to cities and towns, a town's board of aldermen is its municipal legislative body and, therefore, falls within the exception in subdivision (1). *Carter v. Town of Chapel Hill*, 14 N.C. App. 93, 187 S.E.2d 588 (1972).

Cited in State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 16 N.C. App. 279, 192 S.E.2d 138 (1972).

the greater weight of the evidence. In re Thomas, 281 N.C. 598, 189 S.E.2d 245 (1972).

Where a claimant for unemployment had previously quit her job to retire and is presently claiming to have reentered the labor market, the degree of proof required of the claimant is by the greater weight of the evidence. In re Thomas, 281 N.C. 598, 189 S.E.2d 245 (1972).

Judicial Notice. — The State Board of Assessment is neither required nor permitted to shut its eyes to an established fact of common knowledge. In re Valuation of Property Located at 411-417 West Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1972).

Cited in State ex rel. Banking Comm'n v. Bank of Rocky Mount, 12 N.C. App. 112, 182 S.E.2d 625 (1971); **State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen.**, 16 N.C. App. 279, 192 S.E.2d 138 (1972).

ARTICLE 33B.

*Meetings of Governmental Bodies.***§ 143-318.1. Public policy.**

Applied in Humble Oil & Ref. Co. v. Board of Aldermen, 17 N.C. App. 624, 195 S.E.2d 360 (1973).

ARTICLE 34.

*North Carolina Department of Local Affairs.***§ 143-323. Functions of Department.**

Editor's Note. — For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).

ARTICLE 36.

*Department of Administration.***§ 143-341. Powers and duties of Department.****Editor's Note.** —

For note on coastal land use develop-

ment and area-wide zoning, see 49 N.C.L.
Rev. 866 (1971).

ARTICLE 37.

Salt Marsh Mosquito Control.

§ 143-346: Repealed by Session Laws 1973, c. 476, s. 183, effective July 1, 1973.

§ 143-347. Department of Human Resources to advise Commission for Health Services. — It shall be the duty of the Department of Human Resources to advise the Commission for Health Services concerning all aspects of the salt marsh mosquito problem in North Carolina. (1955, c. 1197, s. 2; 1957, c. 831, s. 2; 1973, c. 476, ss. 128, 183.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "Commission for Health Ser-

tion" and "Commission for Health Services" for "State Board of Health."

ARTICLE 37A.

*Marine Science Council.***§ 143-347.2. Membership; terms; expenses.**

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, effective July 1, 1973, "Secretary of Human Resources" should be substituted for "State Health Officer" in this section.

ARTICLE 38.

Department of Water Resources.

§ 143-356. Continuation of Stream Sanitation Committee, Division of Water Pollution Control and Director of Division within Department of Water Resources.

Editor's Note. — Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this section by substituting "Department

of Human Resources" for "State Board of Health."

§ 143-357. Transfer of property, records, and appropriations.

Editor's Note. — Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this section by substituting "Department

of Human Resources" for "State Board of Health."

ARTICLE 39.

*U.S.S. North Carolina Battleship Commission.***§ 143-360. Title.**

Cross Reference. — As to creation and organization of the U.S.S. North Carolina Battleship Commission, see §§ 143B-73, 143B-74.

§§ 143-363 to 143-365: Repealed by Session Laws 1973, c. 476, s. 59, effective July 1, 1973.

ARTICLE 39A.

Frying Pan Lightship Marine Museum Commission.

§§ 143-369.1 to 143-369.3: Repealed by Session Laws 1973, c. 476, s. 116, effective July 1, 1973.

ARTICLE 44.

North Carolina Traffic Safety Authority.

§ 143-392. Authority created; members.—There is hereby created the North Carolina Traffic Safety Authority, hereinafter called the Authority, which shall be composed of the following officials: the Governor, who shall be chairman, the Commissioners of Agriculture, Insurance, Labor, and Motor Vehicles, the chairman of the Board of Transportation, the Superintendent of Public Instruction, the Secretary of Human Resources, the Attorney General, the chairman of the Industrial and Utilities Commissions, the President of the North Carolina Traffic Safety Council, Inc., and one member each from the Senate and House of Representatives to be appointed by the presiding officers thereof. (1965, c. 541, s. 1; 1973, c. 476, s. 128; c. 507, s. 5.)

Editor's Note.—The first 1973 amendment, effective July 1, 1973, substituted "Secretary of Human Resources" for "State Health Director."

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

ARTICLE 45.

North Carolina American Revolution Bicentennial Commission.

§§ 143-396 to 143-399: Repealed by Session Laws 1973, c. 476, s. 70, effective July 1, 1973.

Cross Reference. — For present provisions as to the American Revolution Bicentennial Committee, see §§ 143B-81, 143B-82.

ARTICLE 47.

Promotion of Arts.

§ 143-403. "Arts" defined.—The term "arts" includes, but is not limited to: music, dance, drama, creative writing, architecture and allied fields, painting, sculpture, photography, crafts, television, radio, and the execution and exhibition of such major art forms. (1967, c. 164, s. 1; 1973, c. 476, s. 79.)

Cross Reference. — As to the North Carolina Arts Council, see §§ 143B-87, 143B-88.

Editor's Note. — The 1973 amendment, effective July 1, 1973, deleted the former

first and third sentences and the former second paragraph, relating to the creation and organization of the North Carolina Arts Council.

§§ 143-404, 143-405: Repealed by Session Laws 1973, c. 476, s. 79, effective July 1, 1973.

§ 143-406. Duties of Department of Cultural Resources.—The Department of Cultural Resources shall take action to carry out the following purposes as funds and staff permit:

- (1) Study, collect, maintain, and otherwise disseminate factual data and pertinent information relative to the arts;
- (2) Assist local organizations and the community at large with needs, resources and opportunities in the arts;
- (3) Serves as an agency through which various public and nonpublic organi-

zations concerned with the arts can exchange information, coordinate programs and stimulate joint endeavors;

- (4) Identify research needs, encourage research and assist in obtaining funds for research;
- (5) Assist in bringing the highest obtainable quality in the arts to the State; promote the maximum opportunity for the people to experience, enjoy, and profit from those arts.

The Department of Cultural Resources shall, in addition to such other recommendations, studies and plans as it may submit from time to time, submit a biennial report of progress to the Governor, and thus, to the General Assembly. (1967, c. 164, s. 4; 1973, c. 476, s. 79.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural Resources" for "Council, through its executive director, staff and

"members" in the introductory paragraph and "Department of Cultural Resources" for "Council" in the last paragraph.

§ 143-407. Appropriation; funds. — In addition to the appropriations out of the general fund of the State, the Department may accept gifts, bequests, devises, matching funds, or other considerations for use in promoting the arts. (1967, c. 164, s. 5; 1973, c. 476, s. 79.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department" for "Council" near the middle of

the section and "arts" for "work of the Council" at the end of the section.

§ 143-408: Repealed by Session Laws 1973, c. 476, s. 79, effective July 1, 1973.

ARTICLE 48.

Executive Mansion.

§ 143-409: Repealed by Session Laws 1973, c. 476, s. 67, effective July 1, 1973.

§ 143-410. Purpose. — The purpose of the Department of Cultural Resources shall be:

- (1) To preserve and maintain the Executive Mansion, located at 200 North Blount Street, Raleigh, North Carolina, as a structure having historical significance and value to the State of North Carolina;
- (2) To improve the furnishing of the Executive Mansion by encouraging gifts and objects of art, furniture and articles which may have historical value, and to approve major changes in the furnishings of the Mansion;
- (3) To recommend to the Department of Administration any major renovations to the Executive Mansion which the Department of Cultural Resources deems necessary to preserve and maintain the structure;
- (4) To keep a complete list of all gifts and articles received, together with their history and value; and
- (5) To publicize work of the Executive Mansion Fine Arts Committee. (1967, c. 273, s. 2; 1973, c. 476, s. 67.)

Cross Reference. — As to the Executive Mansion Fine Arts Committee, see §§ 143B-79, 143B-80.

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural Resources" for "Commission" in the introductory language and

in subdivision (3), deleted "and to request the assistance of the State Department of Archives and History for this purpose" preceding the semicolon in subdivision (4) and substituted "Executive Mansion Fine Arts Committee" for "Commission" in subdivision (5).

§ 143-411. Powers.—The Department of Cultural Resources is hereby empowered on behalf of the State of North Carolina to receive gifts, contributions of money and objects of art consistent with the purpose for which the Department is created. Title to all gifts, articles and moneys received by the Department shall be vested in the State of North Carolina and shall remain in the custody and control of the Department. The Department is authorized to accept loans of furniture and other objects as, in its discretion, it deems suitable. The Department is empowered to employ clerical assistance on such basis as it may deem reasonable. Provided, however, that the salary of such person shall be paid out of funds the Department has received in the conduct of its work, and it is specifically provided that no other funds belonging to the State of North Carolina shall be used for this purpose. (1967, c. 273, s. 3; 1973, c. 476, s. 67.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural Resources" for "Commission" near the beginning of the first sentence and "Department" for "Commis-

sion" throughout the remainder of the section and deleted the former last three sentences, relating to expenditure of funds and other powers and duties of the former Executive Mansion Fine Arts Commission.

§§ 143-412 to 143-414: Repealed by Session Laws 1973, c. 476, s. 67, effective July 1, 1973.

ARTICLE 51.

Tobacco Museums.

§§ 143-429, 143-430: Repealed by Session Laws 1973, c. 476, s. 116, effective July 1, 1973.

§ 143-431. Tobacco museums.—It shall be the duty of the Department of Cultural Resources to establish, supervise, manage and maintain the tobacco museums. The Department of Cultural Resources may establish a reasonable fee for viewing the museums which fees shall be used to defray the expenses of the museums. To accomplish these purposes, the Department of Cultural Resources shall have authority to buy and sell real and personal property and to accept donations of real or personal property from any source. The Department of Cultural Resources shall not contract any debt in its purchase of real or personal property. (1969, c. 840, s. 3; 1973, c. 476, s. 116.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural Resources" for "Board" in four places.

§ 143-432. Location of museums.—One of the tobacco museums shall be located within Rockingham County at a site to be determined by the Department of Cultural Resources, and shall emphasize the history and development of tobacco manufacturing. One of the tobacco museums shall be located in Nash or Edgecombe Counties at a site to be determined by the Department of Cultural Resources and shall emphasize the history and development of growing and marketing of tobacco. (1969, c. 840, s. 4; 1973, c. 476, s. 116.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural Resources" for "Board" in two places.

ARTICLE 52.

Pesticides Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-436. North Carolina Pesticide Board; creation and organization.

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, effective July 1, 1973, "Department of Human Resources"

should be substituted for "Department of Health" in this section.

§ 143-439. Pesticide Advisory Committee; creation and functions.

(b) The Pesticide Advisory Committee shall consist of 15 members to be appointed by the Board, as follows: three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife and/or biology; one member each representing the North Carolina Department of Agriculture, the North Carolina Department of Human Resources and a State conservation agency; one representative of a public utility or railroad company which uses pesticides, or of the Board of Transportation.

(1973, c. 476, s. 128; c. 507, s. 5.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "Department of Health" in subsection (b).

The second 1973 amendment, effective July 1, 1973, substituted "Board of Trans-

portation" for "State Highway Commission" in subsection (b).

As subsections (a) and (c) were not changed by the amendments, they are not set out.

Part 2. Regulation of the Use of Pesticides.

§ 143-442. Registration.

(e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any or all brands and grades of pesticides as herein provided, if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant or applicant shall have been given the opportunity for a hearing by the Board, as provided in G.S. 143-464.

(g) Any pesticide declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued. Any pesticide in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Board, unless the pesticide is acceptable for registration and is continued to be registered by the manufacturer or the person offering the pesticide for wholesale or retail sale. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7.)

Editor's Note. — The 1973 amendment inserted "if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or," in subsection (e). The amendment also added subsection (g).

As the rest of the section was not changed by the amendment, only subsections (e) and (g) are set out.

Part 4. Pesticide Applicators and Consultants.

§ 143-452. Licensing of pesticide applicators; fees.

(b) Applications for a pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee of twenty-five dollars (\$25.00) for each pesticide applicator's license. In addition, an annual inspection fee of ten dollars (\$10.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional ten dollar (\$10.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and reg-

ulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made.

(d) The Board shall classify licenses to be issued under this Part. Separate classifications or subclassifications shall be specified for (i) ground and aerial methods of application, and (ii) State and local government units engaged in the control of rodents and insects of public health significance. The Board may include such further classifications and subclassifications as the Board considers appropriate, including provisions for licensing of apprentice pesticide applicators. For aerial applicators, a license shall be required for both the contractor and the pilot. Each classification and subclassification may be subject to separate testing procedures and requirements.

(1973, c. 389, ss. 2, 5.)

Editor's Note. — The 1973 amendment, in subsection (b), rewrote the former second sentence as the present second and third sentences, deleting, at the end of the present third sentence, a provision for a fee for each piece of ground equipment to be licensed, substituted "aircraft" for "equipment" and "additional ten dollar (\$10.00) inspection fee" for "added inspection fee in the same amount as the original fee" in the fourth sentence, substituted "aircraft li-

censed to apply pesticides" for "licensed equipment" and inserted "on the aircraft" and deleted "upon such equipment" preceding "as prescribed" in the sixth sentence and added the eighth and ninth sentences. The amendment also rewrote subsection (d).

As the rest of the section was not changed by the amendment, only subsections (b) and (d) are set out.

§ 143-453. Qualifications for pesticide applicator's license; examinations.—(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for such license. The basic qualifications shall be:

- (1) Two years as an employee or owner-operator in the field of pesticide application. One or more years training in specialized pesticide application and control of pests under university or college supervision may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; or
- (2) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, plant pathology, weed science or related subjects, including sufficient practical experience in pesticide application under proper supervision; or
- (3) As to a local government employee dispensing only pesticides designed to destroy or repel insects of public health significance or to control rodents, sufficient experience to satisfy the Board of his ability to properly dispense such pesticides; or
- (4) As to apprentice aerial pesticide applicators who have met all requirements of the FAA, 30 hours of low-level flying while applying water or other inert substance under the direction and supervision of a licensed pesticide applicator (pilot), provided that aerial applications of pesticides by licensed apprentice aerial pesticide applicators are under the direction and supervision of a licensed pesticide applicator (pilot).

(1973, c. 389, s. 4.)

Editor's Note. — The 1973 amendment added subdivision (4) of subsection (a).

As the rest of the section was not

changed by the amendment, only subsection (a) is set out.

Part 5. General Provisions.

§ 143-460. Definitions.—As used in this Article, unless the context otherwise requires:

(3) Reserved.

(31) Repealed by Session Laws 1973, c. 389, s. 3.
(1973, c. 389, s. 3.)

Editor's Note.—

The 1973 amendment repealed subdivision (31), which defined "Pesticide operator."

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (31) are set out.

§ 143-461. General powers of Board.—In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Board shall have the power, at any time and from time to time:

(2) To authorize the Commissioner by proclamation (i) to suspend or implement, in whole or in part, particular regulations of the Board which may be affected by variable conditions, or (ii) to suspend the application of any provision of this Part to any federal or State agency if it is determined by the Commissioner that emergency conditions require such action.

(1973, c. 389, s. 6.)

Editor's Note. — The 1973 amendment inserted "(i)" and added clause (ii) to subdivision (2).

changed by the amendment, only the introductory language and subdivision (2) are set out.

As the rest of the section was not

ARTICLE 53.

North Carolina Drug Authority.

§ 143-472. Drug Authority; organization. — (a) Membership. — The Drug Authority shall consist of the following 13 members: the Attorney General, the Secretary of Human Resources, the Secretary of Health and Senior Services, the Commissioner of Correction, the Commissioner of Juvenile Correction, the Superintendent of Public Instruction, the Chairman of the Board of Governors of the University of North Carolina, the Secretary of Human Resources, the executive officer of the State Board of Pharmacy, a member of the Board of Medical Examiners of the State of North Carolina appointed by the Board of Medical Examiners for a term of two years commencing July 1 of each odd-numbered year, a member of the North Carolina House of Representatives appointed by the Speaker of the House of Representatives for a term of two years commencing July 1 of each odd-numbered year, a member of the North Carolina Senate appointed by the President pro tempore of the Senate for a term of two years commencing July 1 of each odd-numbered year, and a youth member appointed by the Governor for a term of two years commencing July 1 of each odd-numbered year.

The officers and employees of the State listed above shall be deemed to serve as members *ex officio* of the Drug Authority and their membership on the Authority shall not be deemed to be constitutionally incompatible with the primary offices or places under the terms of the Constitution of North Carolina, Article VI, Sec. 9. Any *ex officio* member may designate another person to represent him on the Authority.

(1971, c. 1244, s. 14; 1973, c. 476, ss. 128, 133, 138.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Secretary of Human Resources" for "Commissioner of Mental Health," "the State

"Health Director" and "the Director of State Vocational Rehabilitation Services" in the first paragraph of subsection (a). The wording of that paragraph as set out

above reflects a literal compliance with the direction of the 1973 act.

As the rest of the section was not

changed by the amendment, only subsection (a) is set out.

§ 143-473. Drug Authority; function.

(c) The North Carolina Drug Authority is hereby designated as the single State agency to coordinate all State efforts relating to drug abuse prevention, education, control, treatment, and rehabilitation.

(d) All drug abuse prevention, education, treatment, rehabilitation and evaluation programs which are implemented after June 30, 1973, with appropriated moneys from the North Carolina General Assembly or the United States Congress shall be implemented only after approval by the North Carolina Drug Authority. Before any agency or organization, public or private, shall receive approval for program implementation from the North Carolina Drug Authority, the Authority shall determine that such programs are consonant with the North Carolina State Plan for Drug Abuse Prevention. (1971, c. 922; 1973, cc. 588, 656.)

Editor's Note.—The first 1973 amendment, effective July 1, 1973, added subsection (d).

The second 1973 amendment added subsection (c).

As subsections (a) and (b) were not changed by the amendments, they are not set out.

§ 143-475.1. State Drug Education Program.—(a) Pursuant to G.S. 90-113.4, G.S. 143-473 and this section, the North Carolina Drug Authority shall establish a State Drug Education Program. This program shall consist of the following:

- (1) Drug prevention education and training for public school teachers, counselors and administrators;
- (2) Drug prevention education and training for community organizations and county/community resource personnel;
- (3) Development of a drug education curriculum for use by teachers in the public schools of the State.

(b) All funds appropriated to the North Carolina Drug Authority for the above stated purposes shall be used to contract with existing public agencies and/or private nonprofit corporations for implementation of the program. In no case shall the North Carolina Drug Authority undertake to implement the program.

(c) Contracts with existing public agencies and/or private nonprofit corporations shall be instituted to achieve the following goals of a State Drug Education Program:

- (1) To provide drug prevention education training for public school teachers, counselors and administrators. This program shall familiarize teachers, counselors and administrators with the youth drug culture by instruction in basic drug information, the legal aspects of drug abuse, alternatives to drug usage and methods of correlating health information, value development, coping skills and decision-making skills into the general curriculum. Said program shall be consonant with the North Carolina State Plan for Drug Abuse Prevention and approved by the North Carolina Drug Authority.
- (2) Implementation of a community resource development program. This program shall develop systems on a county level for drug abuse prevention/education/treatment programs through training of county agency and organization personnel at the local level. This program shall also offer drug prevention education to private citizens and local community groups.
- (3) To develop a curriculum for all grades which will integrate education in

health, value development, coping skills and decision-making skills throughout the general school curriculum.

(d) In implementing the State Drug Education Program, the object shall be for all facets of the program to have a statewide effect, with emphasis on those geographic areas and localities where in the opinion of the North Carolina Drug Authority, the need for such programs is greatest.

(e) Prior to the expenditure of the funds for any program authorized by this section, the North Carolina Drug Authority shall approve said program and insure that said program and services funded are consonant with the North Carolina State Plan for Drug Abuse Prevention. Any deviation by a contractee of the Drug Authority from the program approved by the Authority shall be grounds for termination of the contract and renovation of funding. (1973, c. 587, ss. 1-5.)

Editor's Note.—Session Laws 1973, c. 587, s. 6, makes the act effective July 1, 1973. The reference to § 90-113.4 in the first sentence of this section should be to § 90-113.3.

ARTICLE 54.

North Carolina Council on State Goals and Policy Act.

§§ 143-483 to 143-489: Reserved for future codification purposes.

ARTICLE 55.

The Southern Growth Policies Agreement.

§ 143-490. **Compact enacted into law.**—The Southern Growth Policies Agreement is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows. (1973, c. 200, s. 1.)

§ 143-491. **Article I. Findings and Purposes.**—(a) The party states find that the South has a sense of community based on common social, cultural and economic needs and fostered by a regional tradition. There are vast potentialities for mutual improvement of each state in the region by cooperative planning for the development, conservation and efficient utilization of human and natural resources in a geographic area large enough to afford a high degree of flexibility in identifying and taking maximum advantage of opportunities for healthy and beneficial growth. The independence of each state and the special needs of subregions are recognized and are to be safeguarded. Accordingly, the cooperation resulting from this Agreement is intended to assist the states in meeting their own problems by enhancing their abilities to recognize and analyze regional opportunities and take account of regional influences in planning and implementing their public policies.

(b) The purposes of this Agreement are to provide:

- (1) Improved facilities and procedures for study, analysis and planning of governmental policies, programs and activities of regional significance.
- (2) Assistance in the prevention of interstate conflicts and the promotion of regional cooperation.
- (3) Mechanisms for the coordination of state and local interests on a regional basis.
- (4) An agency to assist the states in accomplishing the foregoing. (1973, c. 200, s. 1.)

§ 143-492. **Article II. The Board.**—(a) There is hereby created the Southern Growth Policies Board, hereinafter called "the Board."

(b) The Board shall consist of five members from each party state, as follows:

- (1) The governor.

- (2) Two members of the state legislature, one appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide.
- (3) Two residents of the state who shall be appointed by the governor to serve at his pleasure.

(c) In making appointments pursuant to paragraph (b)(3), a governor shall, to the greatest extent practicable, select persons who, along with the other members serving pursuant to paragraph (b), will make the state's representation on the Board broadly representative of the several socioeconomic elements within his state.

- (d) (1) A governor may be represented by an alternate with power to act in his place and stead, if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide.
- (2) A legislative member of the Board may be represented by an alternate with power to act in his place and stead, unless the laws of his state prohibit such representation and if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide. An alternate for a legislative member of the Board shall be selected by the member from among the members of the legislative house in which he serves.
- (3) A member of the Board serving pursuant to paragraph (b)(3) of this Article may be represented by another resident of his state who may participate in his place and stead, except that he shall not vote: Provided that notice of the identity and designation of the representative selected by the member is given to the Board in such manner as its bylaws may provide. (1973, c. 200, s. 1.)

§ 143-493. Article III. Powers.—(a) The Board shall prepare and keep current a statement of regional objectives, including recommended approaches to regional problems. The statement may also identify projects deemed by the Board to be of regional significance. The statement shall be available in its initial form two years from the effective date of this Agreement and shall be amended or revised no less frequently than once every six years. The statement shall be in such detail as the Board may prescribe. Amendments, revisions, supplements or evaluations may be transmitted at any time. An annual commentary on the statement shall be submitted at a regular time to be determined by the Board.

(b) In addition to powers conferred on the Board elsewhere in this Agreement, the Board shall have the power to make or commission studies, investigations and recommendations with respect to :

- (1) The planning and programming of projects of interstate or regional significance.
- (2) Planning and scheduling of governmental services and programs which would be of assistance to the orderly growth and prosperity of the region, and to the well-being of its population.
- (3) Effective utilization of such federal assistance as may be available on a regional basis or as may have an interstate or regional impact.
- (4) Measures for influencing population distribution, land use, development of new communities and redevelopment of existing ones.
- (5) Transportation patterns and systems of interstate and regional significance.
- (6) Improved utilization of human and natural resources for the advancement of the region as a whole.
- (7) Any other matters of a planning, data collection or informational character that the Board may determine to be of value to the party states. (1973, c. 200, s. 1.)

§ 143-494. Article IV. Avoidance of Duplication.—(a) To avoid duplication of effort and in the interest of economy, the Board shall make use of existing studies, surveys, plans and data and other materials in the possession of the governmental agencies of the party states and their respective subdivisions or in the possession of other interstate agencies. Each such agency, within available appropriations and if not expressly prevented or limited by law, is hereby authorized to make such materials available to the Board and to otherwise assist it in the performance of its functions. At the request of the Board, each such agency is further authorized to provide information regarding plans and programs affecting the region, or any subarea thereof, so that the Board may have available to it current information with respect thereto.

(b) The Board shall use qualified public and private agencies to make investigations and conduct research, but if it is unable to secure the undertaking of such investigations or original research by a qualified public or private agency, it shall have the power to make its own investigations and conduct its own research. The Board may make contracts with any public or private agencies or private persons or entities for the undertaking of such investigations or original research within its purview.

(c) In general, the policy of paragraph (b) of this Article shall apply to the activities of the Board relating to its statement of regional objectives, but nothing herein shall be construed to require the Board to rely on the services of other persons or agencies in developing the statement of regional objectives or any amendment, supplement or revision thereof. (1973, c. 200, s. 1.)

§ 143-495. Article V. Advisory Committees.—The Board shall establish a Local Governments Advisory Committee. In addition, the Board may establish advisory committees representative of subregions of the South, civic and community interests, industry, agriculture, labor or other categories or any combinations thereof. Unless the laws of a party state contain a contrary requirement, any public official of the party state or a subdivision thereof may serve on an advisory committee established pursuant hereto and such service may be considered as a duty of his regular office or employment. (1973, c. 200, s. 1.)

§ 143-496. Article VI. Internal Management of the Board.—(a) The members of the Board shall be entitled to one vote each. No action of the Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Board are cast in favor thereof. Action of the Board shall be only at a meeting at which a majority of the members or their alternates are present. The Board shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Board may delegate the exercise of any of its powers relating to internal administration and management to an Executive Committee or the Executive Director. In no event shall any such delegation include final approval of:

- (1) A budget or appropriation request.
- (2) The statement of regional objectives or any amendment, supplement or revision thereof.
- (3) Official comments on or recommendations with respect to projects of interstate or regional significance.
- (4) The annual report.

(b) To assist in the expeditious conduct of its business when the full Board is not meeting, the Board shall elect an Executive Committee of not to exceed 17 members, including at least one member from each party state. The Executive Committee, subject to the provisions of this Agreement and consistent with the policies of the Board, shall be constituted and function as provided in the bylaws of the Board. One half of the membership of the Executive Committee shall consist of governors, and the remainder shall consist of other members of the Board, except that at any time when there is an odd number of members on the Executive

Committee, the number of governors shall be one less than half of the total membership. The members of the Executive Committee shall serve for terms of two years, except that members elected to the first Executive Committee shall be elected as follows: One less than half of the membership for two years and the remainder for one year. The Chairman, Chairman-Elect, Vice-Chairman and Treasurer of the Board shall be members of the Executive Committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the Executive Committee shall not affect its authority to act, but the Board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

(c) The Board shall have a seal.

(d) The Board shall elect, from among its members, a Chairman, a Chairman-Elect, a Vice-Chairman and a Treasurer. Elections shall be annual. The Chairman-Elect shall succeed to the office of Chairman for the year following his service as Chairman-Elect. For purposes of the election and service of officers of the Board, the year shall be deemed to commence at the conclusion of the annual meeting of the Board and terminate at the conclusion of the next annual meeting thereof. The Board shall provide for the appointment of an Executive Director. Such Executive Director shall serve at the pleasure of the Board, and together with the Treasurer and such other personnel as the Board may deem appropriate shall be bonded in such amounts as the Board shall determine. The Executive Director shall be Secretary.

(e) The Executive Director, subject to the policy set forth in this Agreement and any applicable directions given by the Board, may make contracts on behalf of the Board.

(f) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director, subject to the approval of the Board, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Board, and shall fix the duties and compensation of such personnel. The Board in its bylaws shall provide for the personnel policies and programs of the Board.

(g) The Board may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(h) The Board may accept for any of its purposes and functions under this Agreement any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Board pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the Board. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Board shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the governor and legislature of each party state a report covering the activities of the Board for the preceding year. The Board at any time may make such additional reports and transmit such studies as it may deem desirable.

(l) The Board may do any other or additional things appropriate to implement powers conferred upon it by this Agreement. (1973, c. 200, s. 1.)

§ 143-497. Article VII. Finance.—(a) The Board shall advise the governor or designated officer or officers of each party state of its budget of estimated expenditures for such period as may be required by the laws of that party state. Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. Such apportionment shall be in accordance with the following formula:

- (1) One third in equal shares,
- (2) One third in the proportion that the population of a party state bears to the population of all party states, and
- (3) One third in the proportion that the per capita income in a party state bears to the per capita income in all party states.

In implementing this formula, the Board shall employ the most recent authoritative sources of information and shall specify the sources used.

(c) The Board shall not pledge the credit of any party state. The Board may meet any of its obligations in whole or in part with funds available to it pursuant to Article VI(h) of this Agreement, provided that the Board takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Board makes use of funds available to it pursuant to Article VI(h), or borrows pursuant to this paragraph, the Board shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same. The Board may borrow against anticipated revenues for terms not to exceed two years, but in any such event the credit pledged shall be that of the Board and not of a party state.

(d) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Board.

(e) The accounts of the Board shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Board.

(f) Nothing contained herein shall be construed to prevent Board compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Board. (1973, c. 200, s. 1.)

§ 143-498. Article VIII. Cooperation with the Federal Government and Other Governmental Entities.—Each party state is hereby authorized to participate in cooperative or joint planning undertakings with the federal government, and any appropriate agency or agencies thereof, or with any interstate agency or agencies. Such participation shall be at the instance of the governor or in such manner as state law may provide or authorize. The Board may facilitate the work of state representatives in any joint interstate or cooperative federal-state undertaking authorized by this Article, and each such state shall keep the Board advised of its activities in respect of such undertakings, to the extent that they have interstate or regional significance. (1973, c. 200, s. 1.)

§ 143-499. Article IX. Subregional Activities.—The Board may undertake studies or investigations centering on the problems of one or more selected subareas within the region: Provided that in its judgment, such studies or investigations will have value as demonstrations for similar or other areas within the region. If a study or investigation that would be of primary benefit to a given state, unit of local government, or intrastate or interstate area is proposed, and if the Board finds that it is not justified in undertaking the work for its regional value as a demonstration, the Board may undertake the study or investigation as a special

project. In any such event, it shall be a condition precedent that satisfactory financing and personnel arrangements be concluded to assure that the party or parties benefited bear all costs which the Board determines that it would be inequitable for it to assume. Prior to undertaking any study or investigation pursuant to this Article as a special project, the Board shall make reasonable efforts to secure the undertaking of the work by another responsible public or private entity in accordance with the policy set forth in Article IV(b). (1973, c. 200, s. 1.)

§ 143-500. Article X. Comprehensive Land Use Planning.—If any two or more contiguous party states desire to prepare a single or consolidated comprehensive land use plan, or a land use plan for any interstate area lying partly within each such state, the governors of the states involved may designate the Board as their joint agency for the purpose. The Board shall accept such designation and carry out such responsibility: Provided that the states involved make arrangements satisfactory to the Board to reimburse it or otherwise provide the resources with which the land use plan is to be prepared. Nothing contained in this Article shall be construed to deny the availability for use in the preparation of any such plan of data and information already in the possession of the Board or to require payment on account of the use thereof in addition to payments otherwise required to be made pursuant to other provisions of this Agreement. (1973, c. 200, s. 1.)

§ 143-501. Article XI. Compacts and Agencies Unaffected.—Nothing in this Agreement shall be construed to:

- (1) Affect the powers or jurisdiction of any agency of a party state or any subdivision thereof.
- (2) Affect the rights or obligations of any governmental units, agencies or officials, or of any private persons or entities conferred or imposed by any interstate or interstate-federal compacts to which any one or more states participating herein are parties.
- (3) Impinge on the jurisdiction of any existing interstate-federal mechanism for regional planning or development. (1973, c. 200, s. 1.)

§ 143-502. Article XII. Eligible Parties; Entry into and Withdrawal.

—(a) This Agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

(b) Any eligible state may enter into this Agreement and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least five states shall be required.

(c) Adoption of the Agreement may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1973. During any period when a state is participating in this Agreement through gubernatorial action, the governor may provide to the Board an equitable share of the financial support of the Board from any source available to him. Nothing in this paragraph shall be construed to require a governor to take action contrary to the constitution or laws of his state.

(d) Except for a withdrawal effective on December 31, 1973, in accordance with paragraph (c) of this Article, any party state may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. (1973, c. 200, s. 1.)

§ 143-503. Article XIII. Construction and Severability.—This Agreement shall be liberally construed so as to effectuate the purposes thereof. The pro-

visions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any state participating therein, the Agreement shall remain in full force and effect as to the state affected as to all severable matters. (1973, c. 200, s. 1.)

§ 143-504. Copies of bylaws and amendments to be filed.—Copies of bylaws and amendments to be filed pursuant to Article VI(j) of the Agreement shall be filed with chief state records-keeping agency. (1973, c. 200, s. 2.)

§ 143-505. Continuance of states as parties.—Nothing contained in the Southern Growth Policies Agreement as enacted by this Article shall in any event be construed to terminate the participation of this State with any state which adopted the Southern Growth Policies Agreement prior to the effective date of this Article, except that the provisions of Article XII(c) shall govern with respect to the continuance of states as parties thereto after December 31, 1973. (1973, c. 200, s. 3.)

§ 143-506. Rights of State and local governments not restricted.—No section, Article, or provision contained herein shall be construed so as to prohibit, restrict or restrain the actions of any individual member state or the actions of any county or municipal government within the boundaries of any individual member state nor shall any delegate from the State of North Carolina be authorized by this General Assembly to cast any vote that would in any manner restrict the sovereign rights presently granted to or retained by this State under the United States Constitution, or the rights of any local governments granted by the Constitution of the State of North Carolina or by statutory acts of the General Assembly. (1973, c. 200, s. 4.)

ARTICLE 56.

Emergency Medical Services Act of 1973.

§ 143-507. Establishment of emergency medical services program.—

(a) There is hereby established a comprehensive emergency medical services program in the Department of Human Resources. All responsibility for this program shall be vested in the Secretary of the Department of Human Resources and other such officers, boards, and commissions specified by law or regulation.

(b) This Article is to enable and assist providers of emergency medical services in the delivery of adequate emergency medical services for all the people of North Carolina and the provision of medical care during a disaster.

(c) Emergency medical services referred to in this Article include all services rendered in responding to the individual's need for immediate medical care in order to prevent loss of life or further aggravation of physiological or psychological illness or injury. Emergency medical care is further described as first aid by members of the community; public knowledge and easy access into the system; prompt dispatch of well designed, equipped, and staffed ambulances; effective care by trained attendants at the scene of the emergency and while in transit; communications with the treatment center while at the scene and while in transit; routing and referral to the appropriate treatment facility; immediate definitive care at the emergency treatment facility; and follow-up lifesaving and restorative care. (1973, c. 208, s. 1.)

Editor's Note. — Session Laws 1973, c. 208, s. 12, is a severability clause.

§ 143-508. Department of Human Resources to establish program.—The State Department of Human Resources shall establish and maintain a program

for the improvement and upgrading of emergency medical services throughout the State. The Department shall consolidate all State functions relating to emergency medical services, both regulatory and developmental, under the auspices of this program. (1973, c. 208, s. 2.)

§ 143-509. Powers and duties of Secretary.—The Secretary of the Department of Human Resources has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall:

- (1) After consulting with the Emergency Medical Services Advisory Council and with such local governments as may be involved, seek the establishment of statewide, regional and local emergency medical services operations;
- (2) Develop a system for classifying and categorizing hospitals as to kinds and levels of emergency treatment they normally and regularly provide and shall make this information available and known to ambulance service providers, health care facilities and to the general public;
- (3) Encourage and assist in the development of appropriately located comprehensive emergency treatment centers;
- (4) Encourage and assist in the development of a statewide emergency medical services communications system which will enable transport vehicles to communicate with treatment facilities;
- (5) Establish a State emergency medical services records system;
- (6) Inspect ambulances, issue permits for operation of ambulance vehicles, train and license ambulance personnel and shall be responsible for the enforcement of all other quality control provisions of the Ambulance Act of 1967, Article 26 of Chapter 130 of the General Statutes of North Carolina;
- (7) Designate emergency medical services radio frequencies and coordinate emergency medical services radio communications networks within FCC rules and regulations; and
- (8) Promote the development of an air ambulance support system to supplement ground vehicle operations. (1973, c. 208, s. 3.)

§ 143-510. Emergency Medical Services Advisory Council.—(a) The Secretary of the Department of Human Resources shall appoint an Emergency Medical Services Advisory Council to consult with him in the administration of this Article. The Council shall be composed of 17 members representing physicians licensed to practice medicine versed in treatment of trauma and suddenly occurring illnesses, emergency room nurses, hospitals, providers of ambulance service (including rescue squads), local government and the general public.

(b) Members shall hold office for a term of four years beginning July 1, 1973, and quadrennially thereafter, except the terms of the members first taking office shall expire, as designated at the time of appointment, six at the end of the second year, six at the end of the third year, and five at the end of the fourth year. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Council shall meet at least once each quarter and at the call of the Secretary of the Department of Human Resources. The Council shall appoint its chairman annually.

(d) Members of the Council shall receive the amount of per diem provided by G.S. 138-5 and actual travel expenses while engaged in Council business or attending Council meetings; all travel expenses shall be paid in accordance with the provisions of the Executive Budget Act. (1973, c. 208, s. 4.)

§ 143-511. Powers and duties of the Council.—The Emergency Medical Services Advisory Council shall

- (1) Advise the Secretary of the Department of Human Resources on recom-

mendation to the commission or commissions as to designation of multicounty emergency medical services regions,

- (2) Give their advice as to all rules and regulations proposed to be adopted by the commission or commissions, and
- (3) Advise the Secretary on all other matters pertaining to this Article.

(1973, c. 208, s. 5.)

§ 143-512. Regional demonstration plans.—The Secretary of the Department of Human Resources is authorized to develop and implement, in conjunction with such local sponsors as may agree to participate, regional emergency medical services systems in order to demonstrate the desirability of comprehensive regional emergency medical services systems and to determine the optimum characteristics of such plans. The Secretary may make special grants-in-aid to participants. (1973, c. 208, s. 6.)

§ 143-513. Regional emergency medical services councils. — The Secretary of the Department of Human Resources may establish emergency medical services regional councils to implement and coordinate emergency medical services programs within regions. (1973, c. 208, s. 7.)

§ 143-514. Training programs.—The Department of Human Resources in cooperation with educational institutions shall develop training programs for emergency medical service personnel. (1973, c. 208, s. 8.)

§ 143-515. Establishment of regions.—The Secretary is authorized to establish an appropriate number of multicounty emergency medical services regions. (1973, c. 208, s. 9.)

§ 143-516. Single State agency.—The Department of Human Resources is hereby designated as the single agency for North Carolina for the purposes of all federal emergency medical services legislation as has or may be hereafter enacted to assist in development of emergency medical services plans and programs. (1973, c. 208, s. 10.)

§ 143-517. Ambulance support; free enterprise. — Nothing in this Article affects the power of local governments to finance ambulance operations or to support rescue squads. Nothing in this Article shall be construed to allow infringement on the private practice of medicine or the lawful operation of health care facilities. (1973, c. 208, s. 11.)

§§ 143-518 to 143-520: Reserved for future codification purposes.

ARTICLE 57.

Crime Study Commission.

§ 143-521. Crime Study Commission created.—There is hereby created a commission to be known as the Crime Study Commission for the study of legislation designed to reduce crime in North Carolina, to be composed of nine members who shall be appointed not later than July 1, 1973, for a two-year term as follows: Three members shall be appointed by the Governor, three members shall be appointed by the President of the Senate, and three members shall be appointed by the Speaker of the House. The subsequent appointments shall be for terms to commence on July 1 of the year in which appointed, and each member shall serve until his successor is appointed and qualifies. Appointees shall be members or former members of the North Carolina General Assembly. (1973, c. 801.)

§ 143-522. Duties of Commission.—It shall be the duty of the Commission to pursue an in-depth study of existing and proposed legislation designed to contribute to the public safety by the reduction of crime in North Carolina, giving particular emphasis to :

- (1) Collecting and reviewing existing legislation in North Carolina designed to reduce crime; as well as pertinent crime information reports, studies and findings in the field of crime from other states and national bodies.
- (2) Collecting and reviewing information on the North Carolina Criminal Justice System including law enforcement, courts, and corrections with a view towards relating them to the concerns and needs of North Carolina in crime reduction.
- (3) Studying and coordinating the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect the Criminal Justice System. The Commission shall make specific recommendations towards the goals enumerated in this section. (1973, c. 801.)

§ 143-523. Organization of Commission.—Upon its appointment, the Commission shall organize by electing from its membership a chairman. The Commission shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building shall be available to the Commission. On request of the chairman, the Director of the Department of Administration shall make available to the Commission and its staff suitable office space and meeting facilities. The Commission is authorized to conduct hearings and to employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties. (1973, c. 801.)

§ 143-524. Members to serve without compensation; subsistence and travel expenses.—Members of the Commission shall serve without compensation but they shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally pursuant to G.S. 138-5. (1973, c. 801.)

§ 143-525. Assistance to Commission.—The Commission, in the performance of its duties, may request and shall receive from every department, board, bureau, agency, commission, or institution of this State, or from any political subdivision of the State, information, cooperation, and assistance. (1973, c. 801.)

§ 143-526. Reports to General Assembly.—The Commission shall make a report to the General Assembly containing its findings and recommendations not later than February 1, 1974, and annually thereafter. (1973, c. 801.)

Chapter 143A.

State Government Reorganization.

Article 11.

Department of Transportation and Highway Safety.
 Sec.
 143A-98.1. Board of Transportation.
 143A-98.2. Secondary Roads Council.
 143A-99. Succession of powers and duties of State Highway Commission.

Article 13.

Department of Human Resources.
 143A-130 to 143A-162. [Repealed.]

Article 16.

Department of Revenue.
 Sec.
 143A-186 to 143A-190. [Repealed.]

Article 17.

Department of Art, Culture and History.
 143A-191 to 143A-230. [Repealed.]

Article 18.

Department of Military and Veterans' Affairs.
 143A-231 to 143A-238. [Repealed.]

ARTICLE 1.

General Provisions.

§ 143A-6. Types of transfers.

Transfer under Type II Transfer of Burial Commission Records and Administrative Personnel to Department of Commerce.

merce.—See opinion of Attorney General to Mr. Irvin Aldridge, Department of Commerce, 41 N.C.A.G. 921 (1972).

§ 143A-11. Principal departments.—Except as otherwise provided by this Chapter, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments.

- (14) Repealed by Session Laws 1973, c. 476, s. 6, effective July 1, 1973.
- (17), (18) Repealed by Session Laws 1973, c. 476, s. 6, effective July 1, 1973.
- (19) Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973. (1971, c. 864, s. 1; 1973, c. 476, s. 6; c. 620, s. 9.)

Cross References. — As to the Department of Human Resources, see §§ 143B-136 through 143B-196. As to the Department of Cultural Resources, see §§ 143B-49 through 143B-115. As to the Department of Revenue, see §§ 143B-217 through 143B-225. As to the Department of Military and Veterans Affairs, see §§ 143B-246 through 143B-253.

Editor's Note. — The first 1973 amendment, effective July 1, 1973, repealed subdivisions (14), Department of Human Re-

sources, (17), Department of Revenue and (18), Department of Art, Culture and History.

The second 1973 amendment, effective July 1, 1973, repealed subdivision (19), Department of Military and Veterans' Affairs.

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (14), (17), (18) and (19) are set out.

ARTICLE 6.

Department of Justice.

§ 143A-54. Company police; powers, duties and functions; transfer.

Applied in North Carolina Ass'n of Licensed Detectives v. Morgan, 17 N.C. App. 701, 195 S.E.2d 357 (1973).

ARTICLE 11.

Department of Transportation and Highway Safety.

§ 143A-98.1. Board of Transportation. — (a) There is hereby created a Board of Transportation. The Board of Transportation shall formulate policies for the carrying out of highway functions assigned to the Department of Transportation and Highway Safety and it shall supervise the carrying out of these functions and perform such other duties as required by law. Notwithstanding the provisions of G.S. 143A-6, 143A-9, or any other statute, except as provided in this act, the Board of Transportation shall have complete and exclusive authority in all highway matters assigned to the Department of Transportation and Highway Safety. The Board of Transportation shall have the authority in organizing the sections, divisions, or other organizational structure of the Department of Transportation and Highway Safety involved in the carrying out of highway functions and, subject to the State Personnel Act, shall have complete authority over hiring, promotions, and dismissals of personnel in the Department of Transportation and Highway Safety paid from the Highway Fund. The Board of Transportation may in its discretion, delegate the award of contracts, the promulgation or [of] ordinances, and management functions to the Secretary, who in turn may subdelegate these functions. The Board of Transportation may in its discretion assign and delegate personnel functions in a manner which in its opinion will achieve maximum efficiency in carrying out highway functions.

(b) The Board of Transportation shall consist of the following:

- (1) The Chairman.—The Secretary of Transportation and Highway Safety shall be an ex officio member of the Board of Transportation and shall be the chairman of the Board of Transportation.
- (2) The Board of Transportation shall have nine members appointed by the Governor. The initial Board members shall be appointed for a term to begin July 1, 1973, and shall serve until January 15, 1977, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1977, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by him, and the Governor shall make public the reason for such removal.
- (3) The Board of Transportation shall have three members appointed from the membership of the General Assembly, in addition to those members appointed by the Governor. One member shall be appointed by the Lieutenant Governor, one shall be appointed by the Speaker of the House of Representatives, and one shall be appointed by the Joint Caucus Leader of the Minority Party. The term of the initial Board members appointed from the membership of the General Assembly shall begin July 1, 1973, and they shall serve until January 15, 1975, or until a successor is duly appointed and qualified. The succeeding terms shall be for two years beginning January 15, 1975, and each two years thereafter. Vacancies in office shall be filled by the same official making the initial appointment to that office.
- (4) The headquarters and main office of the Board of Transportation shall be located in Raleigh, and the Board shall meet once in each 60 days at such regular meeting time as the Board by rule may provide and at any place within the State as the Board may provide, and may hold special meetings at any time or place within the State at the call of the chairman, or any three members of the Board. The Board shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the Board. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. A

majority of the Board shall constitute a quorum for the transaction of business. The members of the Board shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. (1973, c. 507, s. 1.)

Editor's Note. — Session Laws 1973, c. 507, s. 24, makes the act effective July 1, 1973.

§ 143A-98.2. Secondary Roads Council. — There is hereby created a Secondary Roads Council. The Secondary Roads Council of the Department of Transportation and Highway Safety shall consist of 14 members appointed by the Governor who shall serve at the pleasure of the Governor. No two Council members appointed by the Governor while serving shall reside in any one of the 14 engineering divisions as now established by G.S. 136-14.1. The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor. Members of the Council shall receive per diem and necessary travel and subsistence expense in accordance with the provisions of G.S. 138-5. A majority of the members of the Council shall constitute a quorum for the transaction of business. The Council shall meet at least once in each three months at such regular meeting times and places as the Council may provide, or as the Board of Transportation may otherwise provide.

The Secondary Roads Council shall have the duty of adopting annual work programs for secondary roads in each county. Each board of county commissioners shall be consulted in preparing the annual work programs and in case of any disagreement, the board of county commissioners may petition the Board of Transportation for a review. The Board shall make a determination which shall be final. In all other cases, work or action as adopted by the Secondary Roads Council shall proceed as planned, provided that any action taken by the Secondary Roads Council is subject to review by the Board of Transportation. Any action taken by the council may be overruled by a majority of the Board. The annual work programs and projects adopted shall be followed by the Department of Transportation and Highway Safety. (1973, c. 507, s. 1.)

Editor's Note. — Session Laws 1973, c. 507, s. 24, makes the act effective July 1, 1973.

§ 143A-99. Succession of powers and duties of State Highway Commission. — The Board of Transportation shall succeed to all rights, powers, and duties heretofore vested in the State Highway Commission. (1971, c. 864, s. 13; 1973, c. 507, s. 2.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote this section, which as originally enacted transferred the State Highway Commission by a type II transfer to the Department of Transportation and Highway Safety.

ARTICLE 12.

Department of Natural and Economic Resources.

§ 143A-118. Wildlife Resources Commission; transfer. — The Wildlife Resources Commission, as contained in Chapters 75A, 113 and 143 of the General Statutes and the laws of this State, is hereby transferred to the Department of Natural and Economic Resources. The Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural and Economic Resources and, other provisions of this Chapter notwithstanding, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Any other provisions of this Chapter to the contrary notwithstanding, the Executive Director of the Wildlife Resources Commission shall be appointed by the Com-

mission, and the employees of the Commission shall be employed as now provided in G.S. 143-246 and the laws of this State.

Notwithstanding any provision of the Executive Organization Act of 1973 to the contrary, the Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural and Economic Resources. To the end that the independence of the Wildlife Resources Commission be preserved, the Executive Organization Act of 1973 shall not be construed as amending or repealing the provisions of this section. (1971, c. 864, s. 14; 1973, c. 825, s. 1.)

Editor's Note. — The 1973 amendment added the second paragraph.

ARTICLE 13.

Department of Human Resources.

§§ 143A-130 to 143A-162: Repealed by Session Laws 1973, c. 476, s. 183, effective July 1, 1973.

Cross Reference. — For present provisions as to the Department of Human Resources, see §§ 143B-136 through 143B-196.

Editor's Note. — Repealed § 143A-151 was amended by Session Laws 1973, c. 115, s. 2.

ARTICLE 15.

Department of Commerce.

§ 143A-181. Credit Union Commission.

(c) The Credit Union Commission is hereby vested with full power and authority to review, approve, or modify any action taken by the Administrator of Credit Unions in the exercise of all powers, duties, and functions vested by law in or exercised by the Administrator of Credit Unions under the credit union laws of this State.

An appeal may be taken to the Commission from any finding, ruling, order, decision or the final action of the Administrator by any credit union which feels aggrieved thereby. Notice of such appeal shall be filed with the chairman of the Commission within 30 days after such finding, ruling, order, decision or other action, and a copy served upon the Administrator. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is grounded. The Commission shall fix a date, time and place for hearing said appeal, and shall notify the credit union or its attorney of record thereof at least 30 days prior to the date of said hearing. (1971, c. 864, s. 17; 1973, c. 97.)

Editor's Note. — The 1973 amendment added the second paragraph of subsection (c). As subsections (a) and (b) were not changed by the amendment, they are not set out.

ARTICLE 16.

Department of Revenue.

§§ 143A-186 to 143A-190: Repealed by Session Laws 1973, c. 476, s. 193, effective July 1, 1973.

Cross Reference. — For present provisions as to the Department of Revenue, see §§ 143B-217 through 143B-225.

ARTICLE 17.

Department of Art, Culture and History.

§§ 143A-191 to 143A-230: Repealed by Session Laws 1973, c. 476, s. 116, effective July 1, 1973.

Cross Reference. — As to the Department of Cultural Resources, see § 143B-49 et seq.

ARTICLE 18.

Department of Military and Veterans' Affairs.

§§ 143A-231 to 143A-238: Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973.

Cross Reference. — For present provisions as to the Department of Military and Veterans Affairs, see §§ 143B-246 through 143B-253.

GENERAL STATUTES OF NORTH CAROLINA

Chapter 143B.

Executive Organization Act of 1973.

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Editor's Note. — Session Laws 1973, c. 476, s. 194, makes the act effective July 1, 1973.

ARTICLE 1.**GENERAL PROVISIONS.**

§ 143B-1. Short title.—This Chapter shall be known and may be cited as the "Executive Organization Act of 1973." (1973 c. 476, s. 1.)

§ 143B-2. Interim applicability of the Executive Organization Act of 1973.—The Executive Organization Act of 1973 shall be applicable only to the following named departments:

1. Department of Cultural Resources
2. Department of Human Resources
3. Department of Revenue
4. Department of Military and Veterans Affairs. (1973, c. 476, s. 2; c. 620, s. 9.)

§ 143B-3. Definitions.—As used in the Executive Organization Act of 1973, except where the context clearly requires otherwise, the words and expressions defined in this section shall be held to have the meanings here given to them.

- (1) Agency: whenever the term "agency" is used it shall mean and include, as the context may require, an existing department, institution, commission, committee, board, division, bureau, officer or official.

- (2) Board: a collective body which assists the head of a principal department or his designee in the development of major programs including the tender of advice on departmental priorities.
- (3) Commission: a collective body which adopts rules and regulations in a quasi-legislative manner and which acts in a quasi-judicial capacity in rendering findings or decisions involving differing interests.
- (4) Committee: a collective body which either advises the head of a principal department or his designee or advises a commission in detailed technical areas.
- (5) Council: a collective body which advises the head of a principal department or his designee as representative of citizen advice in specific areas of interests.
- (6) Division: the principal subunit of a principal State department.
- (7) Head of department: head of one of the principal State departments.
- (8) Higher education: State senior institutions of higher learning.
- (9) Principal State department: one of the departments created by the General Assembly in compliance with Article III, Sec. 11, of the Constitution of North Carolina. (1973, c. 476, s. 3.)

§ 143B-4. Policy-making authority and administrative powers of Governor; delegation.—The Governor, in accordance with Article III of the Constitution of North Carolina, shall be the Chief Executive Officer of the State. The Governor shall be responsible for formulating and administering the policies of the executive branch of the State government. Where a conflict arises in connection with the administration of the policies of the executive branch of the State government with respect to the reorganization of State government, the conflict shall be resolved by the Governor, and the decision of the Governor shall be final. (1973, c. 476, s. 4.)

§ 143B-5. Governor; continuation of powers and duties.—All powers, duties, and functions vested by law in the Governor or in the Office of Governor are continued except as otherwise provided by the Executive Organization Act of 1973.

The immediate staff of the Governor shall not be subject to the State Personnel Act. (1973, c. 476, s. 5.)

§ 143B-6. Principal departments.—In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

- (1) Department of Cultural Resources
- (2) Department of Human Resources
- (3) Department of Revenue
- (4) Department of Military and Veterans Affairs. (1973, c. 476, s. 6; c. 620, s. 9.)

§ 143B-7. Continuation of functions.—Each principal State department shall be considered a continuation of the former agencies to whose power it has succeeded for the purpose of succession to all rights, powers, duties, and obligations of the former agency. Where a former agency is referred to by law, contract, or other document, that reference shall apply to the principal State department now exercising the functions of the former agency. (1973, c. 476, s. 7.)

§ 143B-8. Unassigned functions.—All functions, duties, and responsibilities established by law that are not specifically assigned to any principal State

department may be assigned by the Governor to that department which, in accordance with the organization of State government, can most appropriately and effectively perform those functions, duties, and responsibilities. This provision shall not apply to professional and occupational licensing boards or to higher education. (1973, c. 476, s. 8.)

§ 143B-9. Appointment of officers and employees.—The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at his pleasure.

The salary of the head of each of the principal State departments, except in those departments headed by popularly elected officers shall, upon the recommendation of the Governor, be set by the General Assembly. The salaries of elected officials shall be as prescribed by law.

The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the State Personnel Act. The salary of such chief deputy or chief assistant shall, upon the recommendation of the Governor, be set by the General Assembly. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the Personnel Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department. (1973, c. 476, s. 9.)

§ 143B-10. Powers and duties of heads of principal departments.—

(a) Assignment of Functions.—Except as otherwise provided by this Chapter, the head of each principal State department may assign or reassign any function vested in him or in his department to any subordinate officer or employee of his department.

(b) Reorganization by Department Heads.—With the approval of the Governor, each head of a principal State department may establish or abolish within his department any division. Each head of a principal State department may establish or abolish within his department any other administrative unit to achieve economy and efficiency and in accordance with sound administrative principles, practices, and procedures except as otherwise provided by law.

(c) Department Staffs.—The head of each principal State department may establish necessary subordinate positions within his department, make appointments to those positions, and remove persons appointed to those positions, all within the limitations of appropriations and subject to the State Personnel Act. All employees within a principal State department shall be under the supervision, direction, and control of the head of that department. The head of each principal State department may establish or abolish positions, transfer officers and employees between positions, and change the duties, titles, and compensation of existing offices and positions as he deems necessary for the efficient functioning of the department, subject to the State Personnel Act and the limitations of available appropriations. For the purposes of the foregoing provisions, a member of a board, commission, council, committee, or other citizen group shall not be considered an "employee within a principal department."

(d) The head of each principal department may create and appoint committees or councils to consult with and advise the department. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5.

(e) Departmental Management Functions.—All management functions of a principal State department shall be performed by or under the direction and supervision of the head of that principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting.

(f) Custody of Records.—The head of a principal State department shall have legal custody of all books, papers, documents, and other records of the department.

(g) Budget Preparation.—The head of a principal State department shall be responsible for the preparation of and the presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department.

(h) Plans and Reports.—Each principal State department shall submit to the Governor an annual plan of work for the next fiscal year prior to the beginning of that fiscal year. Each principal State department shall submit to the governor an annual report covering programs and activities for each fiscal year. These plans of work and annual reports shall be made available to the General Assembly. These documents will serve as the base for the development of budgets for each principal State department of State government to be submitted to the Governor.

(i) Reports to Governor; Public Hearings.—Each head of a principal State department shall develop and report to the Governor legislative, budgetary, and administrative programs to accomplish comprehensive, long-range coordinated planning and policy formulation in the work of his department. To this end, the head of the department may hold public hearings, consult with and use the services of other State agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work.

(j) Departmental Regulations.—The head of each principal State department may adopt regulations, consistent with law and with rules established by the Governor and with the rules and regulations of the State Personnel Board, for

- (1) The administration of his department;
- (2) The conduct of employees of his department;
- (3) The distribution and performance of business; and
- (4) The custody, use, and preservation of the records, documents, and property pertaining to department business. (1973, c. 476, s. 10.)

§ 143B-11. Subunit nomenclature.—(a) The principal subunit of a department is a division. Each division shall be headed by a director.

(b) The principal subunit of a division is a section. Each section shall be headed by a chief.

(c) If further subdivision is necessary, sections may be divided into subunits which shall be known as branches and which shall be headed by heads, and branches may be divided into subunits which shall be known as units and which shall be headed by supervisors. (1973, c. 476, s. 11.)

§ 143B-12. Internal organization of departments; allocation and re-allocation of duties and functions; limitations.—The Governor shall cause the administrative organization of each department to be examined periodically with a view to promoting economy, efficiency, and effectiveness. The Governor may assign and reassign the duties and functions of the executive branch among the principal State departments except as otherwise expressly provided by statute. When the changes affect existing law, they must be submitted to the General Assembly in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina. (1973, c. 476, s. 12.)

§ 143B-13. Appointment, qualifications, terms, and removal of members of commissions.—(a) Each member of a commission created by or under the authority of the Executive Organization Act of 1973 shall be a resident of the State of North Carolina, unless otherwise specifically authorized by law.

Unless more restrictive qualifications are provided in the Executive Organization Act of 1973, the Governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership.

The balance of unexpired terms of existing commission members shall be served in accordance with their most recent appointment.

A vacancy occurring during a term of office is filled in the same manner as the original appointment is made and for the balance of the unexpired term, unless otherwise provided by law or by the Constitution of North Carolina.

(b) A commission membership becomes vacant on the happening of any of the following events before the expiration of the term: (i) the death of the incumbent, (ii) his insanity as determined by final judgment or final order of a court of competent jurisdiction, (iii) his resignation, (iv) his removal from office, (v) his ceasing to be a resident of the State, (vi) his ceasing to discharge the duties of his office over a period of three consecutive months except when prevented by sickness, (vii) his conviction of a felony or of any offense involving a violation of his official duties, (viii) his refusal or neglect to take an oath within the time prescribed, (ix) the decision of a court of competent jurisdiction declaring void his appointment, and (x) his commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, a dipsomaniac, an inebriate, or stimulant addict; but in that event, the office shall not be considered vacant until the order of commitment has become final.

(c) No member of any State commission may: (i) use his position to influence any election or the political activity of any person, (ii) serve as a member of the campaign committee of any political party, (iii) interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or (iv) be in any manner concerned with the demanding, soliciting, or receiving of any assessments, subscriptions, or contributions, whether voluntary or involuntary, to any political party or candidate. Any commission member who shall violate any of the provisions of this section shall be subject to dismissal from office by the Governor.

(d) In addition to the foregoing, any member of a commission may be removed from office by the Governor for misfeasance, malfeasance, and nonfeasance.

(e) Any appointment by the Governor to a commission, board, council or committee made subsequent to January 5, 1973, and prior to July 1, 1973, for a term that would extend for a period inconsistent with the staggered term provisions of the Executive Organization Act of 1973, may be reduced by the Governor to conform to those staggered term provisions. (1973, c. 476, s. 13.)

§ 143B-14. Administrative services to commissions.—(a) The head of the principal State department to which a commission has been assigned is responsible for the provision of all administrative services to the commission.

(b) Except as otherwise provided in the Executive Organization Act of 1973, the powers, duties, and functions of a commission (including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications) shall not be subject to the approval, review, or control of the head of the department or of the Governor.

(c) The Governor may assign to an appropriate commission created by the Executive Organization Act of 1973 duties of a quasi-legislative and quasi-judicial nature existing in the executive branch of State government which have not been assigned by this Chapter to any other commission. All such assignment of duties by the Governor to a commission shall be made by an executive order which has the force and effect of law upon issuance but must be submitted to the General Assembly in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina.

(d) All management functions of a commission shall be performed by the head of the principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting. (1973, c. 476, s. 14.)

§ 143B-15. Compensation of members of commissions.—The salary of members of full-time commissions shall be set by the General Assembly upon recommendation of the Governor to be submitted as a part of his budget requests. (1973, c. 476, s. 15.)

§ 143B-16. Appointment and removal of members of boards, councils, and committees.—Unless more restrictive qualifications are provided in this Chapter, the Governor shall appoint each member of a board, council, or committee on the basis of his interest in public affairs, good judgment, knowledge and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership. Unless other conditions are provided in the Executive Organization Act of 1973, any member of a board, council, or committee may be removed from office by the Governor for misfeasance, malfeasance, or nonfeasance. (1973, c. 476, s. 16.)

§ 143B-17. Commission investigations and orders.—Unless otherwise provided for in the Executive Organization Act of 1973, any commission created by the Executive Organization Act of 1973 may order an investigation into areas of concern over which it has rule-making authority, and the head of the department required to give staff support to such commission shall render such reports and information as the commission may require. In default of the production of information by the head of the principal department or any employee or agent thereof, the commission may seek the aid of the Wake County Superior Court to require the production of information as hereinafter provided.

In proceedings before any commission or any hearing officer or member of the commission so authorized by the commission, if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or refuses to obey any lawful order of a commission contained in its decision rendered after hearing, the chairman of the commission may apply to the Superior Court of Wake County or to the superior court of the county where the proceedings are being held for an order directing that person to take the requisite action. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt. (1973, c. 476, s. 17.)

§ 143B-18. Commission rules and regulations; filing; hearing; copies.—Any rules and regulations adopted by any commission created by the Executive Organization Act of 1973 shall state the effective date and shall be filed as required by law.

A public hearing with at least 10 days' notice advertised in at least three newspapers with general circulation shall be required prior to the adoption of any rules and regulations other than rules and regulations inapplicable to the public at large intended solely as administrative procedures of the commission.

Sufficient copies of adopted rules and regulations shall be made available to interested citizens upon request.

Certified copies of such rules and regulations and amendments thereto shall be received in evidence in all courts and other official proceedings in the State, when in conformity with the Rules of Civil Procedure in Chapter 1A. (1973, c. 476, s. 18.)

§ 143B-19. Pending actions and proceedings.—No action or proceeding pending at the time the Executive Organization Act of 1973 takes effect and brought by or against any State agency whose functions, powers, and duties are transferred by the Executive Organization Act of 1973 to a principal State department shall be affected by any provision of the Executive Organization Act of 1973, but the same may be prosecuted or defended in the name of the head of the principal State department. In all such actions and proceedings, the principal State department to which the functions, powers, and duties of a State agency have been transferred shall be substituted as a party upon appropriate application to the courts. (1973, c. 476, s. 19.)

§ 143B-20. Continuation of rules, regulations, and decisions.—All rules, regulations, acts, determinations, and decisions of any State agency and commissioners and directors thereof pertaining to the functions transferred and assigned by the Executive Organization Act of 1973 to a principal State department or commission and in force at the time of such transfer or assignment shall continue in force and effect as rules, regulations, acts, determinations, and decisions of the principal State department concerned until such time as they may be modified or repealed by the principal State department or commission. (1973, c. 476, s. 20.)

§ 143B-21. Affirmation of prior acts of abolished agencies.—The abolition of certain agencies by the Executive Organization Act of 1973 should not be construed as invalidating any lawful prior act of such agency. (1973, c. 476, s. 21.)

§ 143B-22. Terms occurring in laws, contracts, and other documents.—Any reference or designation in any statute, contract, or other document pertaining to functions, powers, obligations, and duties of a State agency assigned by the Executive Organization Act of 1973 to a principal State department shall be deemed to refer to the principal State department or the head of the principal State department, as may be appropriate. (1973, c. 476, s. 22.)

§ 143B-23. Completion of unfinished business.—Any business or other matter undertaken or commenced by any State agency or the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties hereby transferred to a principal State department, and pending on July 1, 1973, may be conducted and completed by the principal State department in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the State agency or commissioners and directors thereof. (1973, c. 476, s. 23.)

§ 143B-24. Cooperative agreements.—Except as otherwise provided by law, each principal State department may, with the approval of the Department of Administration, enter into cooperative agreements with the federal government, any state government, any agency of the State government, any local government of the State, jointly with any two or more, or severally, in carrying out its functions. (1973, c. 476, s. 24.)

§ 143B-25. Agencies not enumerated.—Any agency not enumerated in the Executive Organization Act of 1973 but established or created by the General Assembly shall continue to exercise all its powers, duties, and functions subject to the provisions of Chapter 143A of the General Statutes of the State of North Carolina. (1973, c. 476, s. 25.)

§ 143B-26. Constitutional references.—All references to the Constitution of North Carolina in the Executive Organization Act of 1973 refer to the Constitution of North Carolina as effective July 1, 1973. (1973, c. 476, s. 26.)

§ 143B-27. Transfer of funds by Governor.—To implement the Executive Organization Act of 1973, the Governor with the approval of the Advisory Budget Commission shall have the authority to transfer all or a part of any appropriations or funds of an agency to the department to which such agency is transferred. (1973, c. 476, s. 27.)

§ 143B-28. Goals of continuing reorganization.—Structural reorganization of State government should be a continuing process, accomplished through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to changing emphases in public needs and should be consistent with the following goals:

- (1) The organization of State government should assure its responsiveness

to popular control. It is the goal of reorganization to improve the administrative capability of the executive to carry out these policies.

- (2) The organization of State government should aid communication between citizens and government. It is the goal of reorganization through co-ordination of related programs in function-oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.
- (3) The organization of State government should assure efficient and effective administration of the policies established by the General Assembly. It is the goal of reorganization to promote efficiency and effectiveness by improving the management and coordination of State services and by eliminating ineffective, overstaffed, obsolete or overlapping activities. (1973, c. 476, s. 28.)

§§ 143B-29 to 143B-48: Reserved for future codification purposes.

ARTICLE 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-49. Department of Cultural Resources—creation, powers, and duties.—There is hereby created a department to be known as the "Department of Cultural Resources," with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 29.)

§ 143B-50. Duties of the Department.—It shall be the duty of the Department to provide the necessary management, development of policy and establishment and enforcement of standards for the furtherance of resources, services and programs involving the arts and the historical and cultural aspects of the lives of the citizens of North Carolina. (1973, c. 476, s. 30.)

§ 143B-51. Functions of the Department.—(a) The functions of the Department of Cultural Resources shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to the development and preservation of libraries, historical records, sites and property, and of an appreciation of art and music and further including those prescribed powers, duties, and functions enumerated in Article 17 of Chapter 143A of the General Statutes of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 17 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Cultural Resources except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

- (1) The Secretary and Department of Art, Culture and History;
- (2) The State Department of Archives and History;
- (3) The North Carolina Advisory Council on Historic Preservation;
- (4) The North Carolina State Library;
- (5) The Interstate Library Compact;
- (6) The North Carolina Museum of Art;
- (7) The North Carolina State Art Society, Inc.;
- (8) The North Carolina Symphony Society, Inc.;
- (9) The State Art Museum Building Commission;
- (10) The Library Certification Board;
- (11) The Tryon Palace Commission;

- (12) The North Carolina Arts Council;
- (13) The U.S.S. North Carolina Battleship Commission;
- (14) The Memorials Commission;
- (15) The Commission to Promote Plans for the Celebration of the Four Hundredth Anniversary of the Landing of Sir Walter Raleigh's Colony on Roanoke Island;
- (16) The Executive Mansion Fine Arts Commission;
- (17) The North Carolina American Revolution Bicentennial Commission;
- (18) The North Carolina Awards Commission;
- (19) The Tobacco Museum Board;
- (20) The Roanoke Island Historical Association, Inc.;
- (21) The Sir Walter Raleigh Memorial Commission;
- (22) The Governor Richard Caswell Memorial Commission;
- (23) The Historic Swansboro Commission;
- (24) The Edenton Historical Commission;
- (25) The Historic Bath Commission;
- (26) The Historic Hillsborough Commission;
- (27) The John Motley Morehead Memorial Commission;
- (28) The Historic Murfreesboro Commission;
- (29) The Charles B. Aycock Memorial Commission;
- (30) The Frying Pan Lightship Marine Museum Commission;
- (31) The Guilford County Bicentennial Commission;
- (32) The Daniel Boone Memorial Commission;
- (33) The Bennett Place Memorial Commission;
- (34) The Durham-Orange Historical Commission;
- (35) The Pitt County Historical Commission;
- (36) The Transylvania County Historical Commission;
- (37) The Lenoir County Historical and Patriotic Commission;
- (38) The Raleigh Historic Sites Commission; and
- (30) The Stonewall Jackson Memorial Fund. (1973, c. 476, s. 31.)

§ 143B-52. Head of the Department.—The Secretary of Cultural Resources shall be the head of the Department. (1973, c. 476, s. 32.)

§ 143B-53. Organization of the Department.—The Department of Cultural Resources shall be organized initially to include the Art Commission, the Art Museum Building Commission, the North Carolina Historical Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission, the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the American Revolution Bicentennial Committee, the North Carolina Awards Committee, the America's Four Hundredth Anniversary Committee, the North Carolina Arts Council, the Public Librarian Certification Commission, the State Library Committee, the North Carolina Symphony Society, Inc., the North Carolina Art Society, and the Division of the State Library, the Division of Archives and History, the Division of the Arts, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 476, s. 33.)

Part 2. Art Commission.

§ 143B-54. Art Commission—creation, powers and duties.—There is hereby created the Art Commission of the Department of Cultural Resources with the power and duty to promulgate rules and regulations concerning the acquisition and disposal of art objects for the State of North Carolina and with the power and duty to adopt, amend, and rescind rules and regulations under, and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The Art Commission shall have the following powers and duties:

- a. In consultation with the Secretary of Cultural Resources, on behalf of and in the name of the North Carolina Museum of Art, to acquire by purchase, gift or will, absolutely or in trust, from individuals, corporations, the federal government, or from any other source, money or other property which may be retained, sold, or otherwise used to promote the purposes of the North Carolina Museum of Art as provided by G.S. 140-2;
- b. In consultation with the Secretary of Cultural Resources to exchange works of art owned by the North Carolina Museum of Art for other works of art which, in the opinion of the Commission, would improve the quality, value, or representative character of the art collection of the Museum as provided by G.S. 140-2;
- c. In consultation with the Secretary of Cultural Resources to sell any work of art owned by the North Carolina Museum of Art as provided by G.S. 140-2;
- d. To approve prior to acceptance any gift of artistic value given to the State as provided in Chapter 100 of the General Statutes of North Carolina;
- e. To advise the Secretary concerning the inspection, appraisal, obtaining attributions and evaluations of, transporting, exhibiting, lending, storing, receiving upon consignment or as loans, statuary, paintings, and other works of art of any and every kind and description which are worthy of acquisition, preservation, and exhibition by the North Carolina Museum of Art; and
- f. To advise the Secretary on the care, custody, storage and preservation of all works of art acquired by the North Carolina Museum of Art, or received by it upon consignment or loan.

(2) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations heretofore adopted by the Board of Trustees of the State Art Museum, the Memorials Commission, and the Executive Mansion Fine Arts Commission shall remain in full force and effect unless and until repealed or superseded by action of the Art Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 34.)

§ 143B-55. Art Commission—members, selection, quorum, compensation.—The Art Commission of the Department of Cultural Resources shall consist of 11 members appointed by the Governor, four of whom shall be appointed upon the nomination of the State Art Society. Two of the members, whether appointed by the Governor or upon nomination of the State Art Society shall be members of the art or design faculty at a North Carolina college or university. The initial members of the Commission shall include the four members of the Art Museum Board of Trustees whose terms on the Art Museum Board of Trustees expire July 1, 1976, and who shall serve for a period equal to the remainder of their current terms on the Art Museum Board of Trustees. Of the four nominated by the North Carolina Art Society, two shall be appointed for an initial term of one year and two shall be for an initial term of five years. Of the three appointed by the Governor, two shall be appointed for initial terms of one year and one shall be for an initial term of five years. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission

from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 35.)

§ 143B-56. Art Commission—officers.—The Art Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 36.)

§ 143B-57. Art Commission—regular and special meetings. — The Art Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 476, s. 37.)

Part 3. Art Museum Building Commission.

§ 143B-58. Art Museum Building Commission—creation, powers and duties.—There is hereby recreated the Art Museum Building Commission of the Department of Cultural Resources and the State Art Museum Building Commission shall have the following powers and duties:

- (1) With the approval of the Governor and Council of State and the North Carolina State Capital Planning Commission to determine the site for the building of the State Art Museum in accordance with directions, if any, from the General Assembly.
- (2) To employ architects to prepare plans for the State Art Museum Building, to assist and advise the architects in the preparation of those plans, and to approve on behalf of the State all plans for the State Art Museum Building.
- (3) To enter on behalf of the State into contracts for the construction of an art museum building and the employment of consultants and for the purchase of services, materials, furnishings, and equipment required in connection with the location, design, construction, furnishing, and equipping of said museum building.
- (4) To supervise generally the location, construction, furnishing, equipping, renovating and care of the State Art Museum Building.
- (5) To call upon the Department of Administration, the Attorney General, and any other State agency or officer for such assistance as the Commission may require in carrying out its duties.
- (6) To appoint such advisory committees, composed of persons not members of the Commission, as the Commission deems necessary.
- (7) To report to the General Assembly at each regular session concerning action taken by the Commission during the previous biennium in carrying out the provisions of this Article, and to make such special reports as may be requested by the General Assembly or the Governor.
- (8) To receive gifts of funds from foundations, corporations and individuals and to receive public funds to aid in defraying the cost of said building and surrounding facilities including landscaping. (1973, c. 476, s. 39.)

§ 143B-59. Art Museum Building Commission—members; selection; quorum; compensation.—The Art Museum Building Commission of the De-

partment of Cultural Resources shall consist of 15 members with nine appointed by the Governor, three persons who have served in the State Senate to be appointed by the President of the Senate, and three persons who have served in the House of Representatives to be appointed by the Speaker of the House of Representatives. The initial members of the Commission shall be the members of the existing Art Museum Building Commission who shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this Article for the appointee whom he succeeds.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provision of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 40.)

§ 143B-60. Art Museum Building Commission—officers.—The Governor shall appoint one member of the Commission to serve as chairman. (1973, c. 476, s. 41.)

§ 143B-61. Art Museum Building Commission—regular and special meetings.—The Art Museum Building Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members. (1973, c. 476, s. 42.)

Part 4. North Carolina Historical Commission.

§ 143B-62. North Carolina Historical Commission — creation, powers, and duties.—There is hereby created the North Carolina Historical Commission of the Department of Cultural Resources to give advice and assistance to the Secretary of Cultural Resources and to promulgate rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value, and in the extension of State aid to other agencies, counties, municipalities, organizations, and individuals in the interest of historic preservation.

- (1) The Historical Commission shall have the following powers and duties:
 - a. To advise the Secretary of Cultural Resources on the scholarly editing, writing, and publication of historical materials to be issued under the name of the Department;
 - b. To evaluate and approve proposed nominations of historic, archaeological, architectural, or cultural properties for entry on the National Register of Historic Places;
 - c. To evaluate and approve the State plan for historic preservation as provided for in Chapter 121;
 - d. To evaluate and approve historic, archaeological, architectural, or cultural properties proposed to be acquired and administered by the State;
 - e. To evaluate and prepare a report on its findings and recommendations concerning any property not owned by the State for which

State aid or appropriations are requested, and to submit its findings and recommendations in accordance with Chapter 121;

- f. To serve as an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, particularly by evaluating and making recommendations concerning any State undertaking which may affect a property that has been entered on the National Register of Historic Places as provided for in Chapter 121 of the General Statutes of North Carolina;
- g. To exercise any other powers granted to the Commission by provisions of Chapter 121 of the General Statutes of North Carolina; and
- h. To give its professional advice and assistance to the Secretary of Cultural Resources on any matter which the Secretary may refer to it in the performance of the Department's duties and responsibilities provided for in Chapter 121 of the General Statutes of North Carolina.

(2) The Historical Commission shall have the power and duty to establish standards and provide rules and regulations as follows:

- a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina State Archives or the North Carolina Museum of History;
- b. For the disposition of public records under provisions of Chapter 121 of the General Statutes of North Carolina; and
- c. For the certification of records in the North Carolina State Archives as provided in Chapter 121 of the General Statutes of North Carolina;
- d. For the use by the public of historic, architectural, archaeological, or cultural properties as provided in Chapter 121 of the General Statutes of North Carolina;
- e. For the acquisition of historic, archaeological, architectural, or cultural properties by the State;
- f. For the extension of State aid or appropriations to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration; and
- g. For qualification for grants-in-aid or other assistance from the federal government for historic preservation or restoration as provided in Chapter 121 of the General Statutes of North Carolina. This section shall be construed liberally in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this section. All current rules and regulations heretofore adopted by the Executive Board of the State Department of Archives and History, the Historic Sites Advisory Committee, the North Carolina Advisory Council on Historical Preservation, the Executive Mansion Fine Arts Commission, and the Memorials Commission shall remain in full force and effect unless and until repealed or superseded by action of the Historical Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 44.)

§ 143B-63. Historical Commission—members; selection; quorum; compensation.—This Historical Commission of the Department of Cultural Resources shall consist of seven members appointed by the Governor.

The initial members of the Commission shall be the members of the Executive

Board of the Department of Archives and History who shall serve for a period equal to the remainder of their current terms on the Executive Board of the Department of Archives and History, two of whose appointments expire March 31, 1973, two of whose appointments expire March 31, 1975, and three of whose appointments expire on March 31, 1977. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Of the members, at least four shall have had professional training or experience in the fields of archives, history, historic preservation, or museums administration including at least two current faculty members of graduate history departments at North Carolina colleges or universities. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 45.)

§ 143B-64. Historical Commission—officers.—The Historical Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 46.)

§ 143B-65. Historical Commission—regular and special meetings.—The Historical Commission shall meet at least twice per year and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 476, s. 42.)

Part 5. Archaeological Advisory Committee.

§ 143B-66. Archaeological Advisory Committee—members; selection; compensation; terms.—For the purposes of reviewing existing statutes relating to archaeological resources, of making recommendations to the General Assembly concerning programs and statutes, and of advising the Department on the development of its archaeological program, there is hereby created an Archaeological Advisory Committee to be composed of the State Historian as chairman and the following members: one member of the Senate appointed by the President of the Senate; one member of the House of Representatives appointed by the Speaker of the House; two members representing the American Indians of North Carolina, one appointed by the Tribal Council of the Eastern Band of the Cherokee, and one appointed by the Executive Director of the North Carolina State Commission of Indian Affairs; and one archaeologist appointed by the North Carolina Archaeological Advisory Council. Members of the committee shall serve without salary, but their actual expenses resulting from the performance of their official duties shall be reimbursed in accordance with State policy. Members shall be appointed for two-year terms beginning July 1 of the odd-numbered years and shall serve until their successors are appointed and qualified. Initial appointments shall be made immediately upon ratification for terms to expire June 30, 1975. (1973, c. 596.)

Part 6. Public Librarian Certification Commission.

§ 143B-67. Public Librarian Certification Commission — creation, powers and duties.—There is hereby created the Public Librarian Certification Commission of the Department of Cultural Resources with the power and duty to adopt rules and regulations to be followed in the certification of public librarians.

The Commission shall adopt such rules and regulations consistent with the provisions of this Chapter. All rules and regulations consistent with the provisions of this Chapter heretofore adopted by the Library Certification Board shall remain in full force and effect unless and until repealed or superseded by action of the Public Librarian Certification Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 49.)

§ 143B-68. Public Librarian Certification Commission — members; selection; quorum; compensation.—The Public Librarian Certification Commission of the Department of Cultural Resources shall consist of five members as follows: (i) the chairman of the North Carolina Association of Library Trustees, (ii) the chairman of the public libraries section of the North Carolina Library Association, (iii) an individual named by the Governor upon the nomination of the North Carolina Library Association, (iv) the dean of a State or regionally accredited graduate school of librarianship in North Carolina appointed by the Governor and (v) one member at large appointed by the Governor.

The members shall serve four-year terms or while holding the appropriate chairmanships. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem, and necessary travel expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department through the regular staff of the Department. (1973, c. 476, s. 50.)

§ 143B-69. Public Librarian Certification Commission—officers.—The Public Librarian Certification Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 51.)

§ 143B-70. Public Librarian Certification Commission—regular and special meetings.—The Public Librarian Certification Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least three members. (1973, c. 476, s. 52.)

Part 7. Tryon Palace Commission.

§ 143B-71. Tryon Palace Commission — creation, powers, and duties.—There is hereby created the Tryon Palace Commission of the Department of Cultural Resources with the power and duty to adopt, amend and rescind rules and regulations concerning the restoration and maintenance of the Tryon Palace complex, and such other powers and duties as provided in Article 2 of Chapter 121 of the General Statutes of North Carolina. (1973, c. 476, s. 54.)

§ 143B-72. Tryon Palace Commission—members; selection; quorum; compensation.—The Tryon Palace Commission of the Department of Cultural Resources shall consist of 25 members appointed by the Governor and in addition to the members who are appointed by the Governor, the Attorney General, the Secretary of Natural and Economic Resources or his designee, the Mayor of the City of New Bern, and the Chairman of the Board of Commissioners of Craven County shall serve as ex officio members of said Commission. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the Tryon Palace Commission.

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall serve without pay and without expense allowance. (1973, c. 476, s. 55.)

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-73. U.S.S. North Carolina Battleship Commission—creation, powers, and duties.—There is hereby created the U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of this State necessary in carrying out the provisions and purposes of this Article.

- (1) The U.S.S. North Carolina Battleship Commission is authorized and empowered to adopt such rules and regulations not inconsistent with the management responsibilities of the Secretary of the Department provided by Chapter 143A of the General Statutes and Laws of this State and this Chapter that may be necessary and desirable for the operation and maintenance of the U.S.S. North Carolina as a permanent memorial and exhibit as provided in Article 39 of Chapter 143 of the General Statutes of North Carolina.
- (2) The U.S.S. North Carolina Battleship Commission shall have the power and duty to establish standards and adopt rules and regulations: (i) establishing and providing for a proper charge for admission to the ship; and (ii) for the maintenance and operation of the ship as a permanent memorial and exhibit.
- (3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter and Article 39 of Chapter 143 of the General Statutes of North Carolina. (1973, c. 476, s. 57.)

§ 143B-74. U.S.S. North Carolina Battleship Commission — members; selection; quorum; compensation.—The U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources shall consist of not more than 15 members including the Secretary of Natural and Economic Resources who shall serve as an ex officio member. The initial members of the Commission shall be the appointed members of the current Battleship Commission who shall serve for a period equal to the remainder of their current terms on the Battleship Commission. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the U.S.S. North Carolina Battleship Commission.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business. (1973, c. 476, s. 58.)

Part 9. Sir Walter Raleigh Commission.

§ 143B-75. Sir Walter Raleigh Commission—creation, powers, and duties.—There is hereby created the Sir Walter Raleigh Commission of the Department of Cultural Resources.

(1) The Sir Walter Raleigh Commission shall have the following powers and duties:

- a. To solicit, collect, and turn over to the Secretary of Cultural Resources voluntary donations from the people of North Carolina, including the school children of the State, for the purpose of acquiring, executing and erecting in the City of Raleigh a memorial to Sir Walter Raleigh;
- b. To determine the form and characteristics of such memorial and to advise and assist the Secretary of Cultural Resources in the selection of an appropriate person or persons to execute said memorial;
- c. To advise the Secretary on the expenditure of such funds as may not be required for the acquisition, execution, and erection of said memorial to the end that such funds may be used in a manner appropriate to the memorializing of Sir Walter Raleigh, including publications and observances; and
- d. To advise the Superintendent of Public Instruction on the designation of a Sir Walter Raleigh Day in the public schools of the State and on the appropriate observances thereof.

(2) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for historical memorial purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Sir Walter Raleigh Memorial Commission shall remain in full force and effect unless and until repealed or superseded by action of the Sir Walter Raleigh Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 60.)

§ 143B-76. Sir Walter Raleigh Commission—members; selection; quorum; compensation.—The Sir Walter Raleigh Commission of the Department of Cultural Resources shall consist of 21 members appointed by the Governor.

Of the initial members of the Commission seven shall be appointed for a six-year term, seven appointed for a four-year term and seven appointed for a two-year term. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the Sir Walter Raleigh Commission.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive neither pay, per diem, nor necessary travel and subsistence expenses.

A majority of the Commission shall constitute a quorum for the transaction of business. (1973, c. 476, s. 61.)

§ 143B-77. Sir Walter Raleigh Commission—officers.—The Sir Walter Raleigh Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 62.)

§ 143B-78. Sir Walter Raleigh Commission—regular and special meetings.—The Sir Walter Raleigh Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least 11 members. (1973, c. 476, s. 63.)

Part 10. Executive Mansion Fine Arts Committee.

§ 143B-79. Executive Mansion Fine Arts Committee — creation, powers, and duties.—There is hereby created the Executive Mansion Fine Arts Committee. The Executive Mansion Fine Arts Committee shall have the following functions and duties:

- (1) To advise the Secretary of Cultural Resources on the preservation and maintenance of the Executive Mansion located at 200 North Blount Street, Raleigh, North Carolina;
- (2) To encourage gifts and objects of art, furniture and articles of historical value for furnishing the Executive Mansion, and advise the Secretary of Cultural Resources on major changes in the furnishings of the Mansion;
- (3) To make recommendations to the Secretary of Cultural Resources concerning major renovations necessary to preserve and maintain the structure;
- (4) To aid the Secretary of Cultural Resources in keeping a complete list of all gifts and articles received together with their history and value;
- (5) No gifts or articles shall be accepted for the Executive Mansion without the approval of the Art Commission or the Historical Commission; and
- (6) The Committee shall advise the Secretary of Cultural Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 65.)

§ 143B-80. Executive Mansion Fine Arts Committee—members; selection; quorum; compensation.—The Executive Mansion Fine Arts Committee shall consist of 16 members appointed by the Governor. The initial members of the Committee shall be the appointed members of the present Executive Mansion Fine Arts Commission who shall serve for a period equal to the remainder of their current terms on the Executive Mansion Fine Arts Commission, four of whose appointments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. At the end of the respective terms of office of the initial members, the appointments of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 66.)

Part 11. American Revolution Bicentennial Committee.

§ 143B-81. American Revolution Bicentennial Committee — creation, powers, and duties. — There is hereby created the North Carolina American Revolution Bicentennial Committee. The North Carolina American Revolution Bicentennial Committee shall have the following functions and duties :

- (1) To advise the Secretary of Cultural Resources concerning plans and programs for the observance of the bicentennial of the American Revolution and to advise the Secretary on the conduct of such programs or series of observations ; and
- (2) To advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 68.)

§ 143B-82. American Revolution Bicentennial Committee — members; selection; quorum; compensation. — The American Revolution Bicentennial Committee of the Department of Cultural Resources shall consist of 25 members, 22 of whom shall be appointed by the Governor and the following three ex officio members : the Secretary of Natural and Economic Resources or designee, the Superintendent of Public Instruction or designee, and the State Regent of the D.A.R. Of the 22 members appointed by the Governor, nine shall be members of North Carolina college and university history faculties. The initial members of the American Revolution Bicentennial Committee shall include the members of the American Revolution Bicentennial Commission for the balance of their existing terms, two of whose appointments expire March 21, 1973, two of whose appointments expire March 21, 1974, two of whose appointments expire March 21, 1975, two of whose appointments expire March 21, 1976, and two of whose appointments expire March 21, 1977. To maintain the staggered terms the Governor shall appoint three of the additional members for five-year terms, three for four-year terms, two for three-year terms, two for two-year terms, and two for one-year terms. At the end of the respective terms of office of the initial members of the Committee, their successors shall be appointed for terms of five years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

The members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

The Secretary of Cultural Resources is hereby authorized to request contingency and emergency funds for the administration of the American Revolution Bicenten-

nial Committee, for the period between July 1, 1973, and ratification of the next general appropriations bill for the Department.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 69.)

Part 12. North Carolina Awards Committee.

§ 143B-83. North Carolina Awards Committee — creation, powers, and duties.—There is hereby created the North Carolina Awards Committee with the duty to advise the Secretary of Cultural Resources on the formulation and administration of the program governing North Carolina awards and on the selection of a committee in each award area to choose the recipients.

The Committee shall advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 71.)

§ 143B-84. North Carolina Awards Committee — members; selection; quorum; compensation.—The North Carolina Awards Committee shall consist of five members appointed by the Governor to serve at the Governor's pleasure.

The Governor shall designate a member of the Committee as chairman to serve in such capacity at the pleasure of the Governor.

Members of the Committee shall serve without compensation or travel or per diem.

A majority of the Committee shall constitute a quorum for the transaction of business.

The Secretary of Cultural Resources is hereby authorized to request contingency and emergency funds for the administration of the North Carolina Awards Committee, for the period between July 1, 1973, and ratification of the next general appropriations bill for the Department.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 72.)

Part 13. America's Four Hundredth Anniversary Committee.

§ 143B-85. America's Four Hundredth Anniversary Committee—creation, powers, and duties.—There is hereby created the America's Four Hundredth Anniversary Committee of the Department of Cultural Resources. The Committee shall have the following functions and duties:

- (1) To advise the Secretary of the Department on the planning, conducting, and directing appropriate observances of, and of [on] providing necessary physical facilities and other requirements for, the commemoration of the landing of Sir Walter Raleigh's colony on Roanoke Island; and
- (2) To advise the Secretary of the Department upon any matter the Secretary might refer to it. (1973, c. 476, s. 74.)

§ 143B-86. America's Four Hundredth Anniversary Committee—members; selection; quorum; compensation.—The America's Four Hundredth Anniversary Committee shall consist of 14 members as follows: 10 members at large appointed by the Governor and four ex officio members as follows: the Mayor of the town of Manteo, the Secretary of Natural and Economic Resources, the chairman of the Roanoke Island Historical Association, and the chairman of the Dare County Board of Commissioners, or their designees. Of the initial members of the America's Four Hundredth Anniversary Committee appointed by the Governor five shall be appointed for terms expiring June 30, 1975, and five for terms expiring June 30, 1977. At the end of their respective terms of office, the appointments shall be for a term of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created

by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business. (1973, c. 476, s. 75.)

Part 14. North Carolina Arts Council.

§ 143B-87. North Carolina Arts Council — creation, powers, and duties.—There is hereby created the North Carolina Arts Council with the following duties and functions:

- (1) To advise the Secretary of Cultural Resources on the study, collection, maintenance and dissemination of factual data and pertinent information relative to the arts;
- (2) To advise the Secretary concerning assistance to local organizations and the community at large in the area of the arts;
- (3) To advise the Secretary on the exchange of information, promotion of programs and stimulation of joint endeavor between public and non-public organizations;
- (4) To identify research needs in the arts area and to encourage such research;
- (5) To advise the Secretary in regard to bringing the highest obtainable quality in the arts to the State and promoting the maximum opportunity for the people to experience and enjoy those arts; and
- (6) To advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 77.)

§ 143B-88. North Carolina Arts Council — members; selection; quorum; compensation.—The North Carolina Arts Council shall consist of 24 members appointed by the Governor. The initial members of the Council shall be the appointed members of the present Arts Council who shall serve for a period equal to the remainder of their current terms on the Arts Council, eight of whose terms expire June 30, 1973, eight of whose terms expire June 30, 1974, and eight of whose terms expire June 30, 1975. At the end of the respective terms of office of the initial members, the appointments of their successors shall be for terms of three years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council as chairman to serve at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 78.)

Part 15. North Carolina Art Society, Incorporated.

§ 143B-89. North Carolina Art Society, Incorporated. — The North Carolina Art Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 3 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Art Society, Incorporated, shall be a board of directors consisting of 15 members, of whom the Governor of this State, the Superintendent of Public Instruction, the Treasurer of the State of North Carolina, and the chairman of the art committee of the North Carolina Federation of the Woman's Club shall be ex officio members, and four others shall be named by the Governor of the State. The remaining eight directors shall be chosen by members of the North Carolina Art Society, Incorporated, in such manner and for such terms as that body shall determine. The four directors named by the Governor shall serve for terms of four years each. (1973, c. 476, s. 80.)

Part 16. State Library Committee.**§ 143B-90. State Library Committee—creation, powers, and duties.**

—There is hereby created the State Library Committee of the Department of Cultural Resources. The State Library Committee shall have the following functions and duties:

- (1) To advise the Secretary of the Department on matters relating to the operation and services of the State Library;
- (2) To suggest programs to the Secretary of the Department to aid in the development of libraries statewide; and
- (3) To advise the Secretary of Cultural Resources upon any matter the Secretary might refer to it. (1973, c. 476, s. 82.)

§ 143B-91. State Library Committee — members; selection; quorum; compensation. — The State Library Committee shall consist of seven members and shall be composed as follows: Six members appointed by the Governor, and the duly elected and installed President of the North Carolina Library Association.

The initial members of the Committee shall be the current President of the North Carolina Library Association and the appointed members of the Library board of trustees who shall serve for a period equal to the remainder of their current terms on the Library board of trustees, two of whose appointments expire July 1, 1973; two of whose appointments expire July 1, 1975; and two of whose appointments expire July 1, 1977. At the end of the respective terms of office of the initial members, the appointments of all appointed members shall be for terms of six years and until their successors are appointed and qualify except in the case of the President of the North Carolina Library Association who shall be replaced biennially by his successor in office. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 83.)

Part 17. Roanoke Island Historical Association.

§ 143B-92. Roanoke Island Historical Association — creation, powers, and duties.—There is hereby recreated the Roanoke Island Historical Association with the powers and duties delineated in Article 19 of Chapter 143 of the General Statutes of North Carolina. (1973, c. 476, s. 85.)

§ 143B-93. Roanoke Island Historical Association—status. — The Roanoke Island Historical Association is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-92 through G.S. 143B-94. (1973, c. 476, s. 86.)

Part 18. North Carolina Symphony Society.

§ 143B-94. North Carolina Symphony Society, Inc.—The North Carolina Symphony Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 2 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Symphony Society, Incorporated, shall be a board of trustees consisting of not less than 16 members of which the Governor of the State and the Superintendent of Public Instruction shall be ex officio members and four other members shall be named by the Governor. The remaining trustees shall be chosen by members of the North Carolina Symphony Society, Incorporated, in such manner and for such terms as that body shall determine. The initial members named by the Governor shall be appointed from the members of the existing board of trustees of the North Carolina State Symphony Society, Incorporated, for the balance of their existing terms. Subsequent appointments shall be made for terms of four years each. (1973, c. 476, s. 88.)

Part 19. Edenton Historical Commission.

§ 143B-95. Edenton Historical Commission—creation, powers, and duties.—There is hereby recreated the Edenton Historical Commission. The Edenton Historical Commission shall have the following powers:

- (1) To acquire and dispose of title to or interests in historic properties in the Town of Edenton and County of Chowan and to repair, restore, or otherwise improve such properties, and to maintain them;
- (2) To cooperate with, assist, and advise the Secretary of Cultural Resources upon any matters pertaining to the administration of any state-owned historic property or properties in Edenton which the Secretary of the Department may refer to it; and
- (3) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 90.)

§ 143B-96. Edenton Historical Commission—status. — The Edenton Historical Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-95 through G.S. 143B-99. (1973, c. 476, s. 91.)

§ 143B-97. Edenton Historical Commission—reports. — The Edenton Historical Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 92.)

§ 143B-98. Edenton Historical Commission—members; selection; quorum; compensation.—The Edenton Historical Commission shall consist of not fewer than 25 members appointed by the Governor plus, ex officio, the Mayor of the Town of Edenton, the Chairman of the Board of Commissioners of Chowan County, and the Secretary of Cultural Resources or designee.

The initial members of the Commission shall be the members of the present Edenton Historical Commission and shall serve at the pleasure of the Governor. Members of the Commission shall elect their own officers and members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 93.)

Part 20. Historic Bath Commission.

§ 143B-99. Historic Bath Commission—creation, powers, and duties.—There is hereby created the Historic Bath Commission. The Historic Bath Commission shall have the following powers:

- (1) To acquire and dispose of title to or interests in historic properties in and near the Town of Bath in Beaufort County, and to repair, restore, or otherwise improve such properties, and to maintain them;
- (2) To offer such historic properties to the State of North Carolina, subject to the acceptance of such properties by the State;
- (3) To cooperate with, assist, and advise the Secretary of Cultural Resources upon any matter pertaining to the administration of Bath State Historic Site, which the Secretary of the Department may refer to it; and
- (4) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 95.)

§ 143B-100. Historic Bath Commission—status.—The Historic Bath Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-99 through G.S. 143B-103. (1973, c. 476, s. 96.)

§ 143B-101. Historic Bath Commission—reports.—The Historic Bath Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend the abolition of the Commission to the next General Assembly. (1973, c. 476, s. 97.)

§ 143B-102. Historic Bath Commission—members; selection; quorum; compensation.—The Historic Bath Commission shall consist of 25 members appointed by the Governor plus, ex officio, the Mayor of the Town of Bath, the Chairman of the Board of Commissioners of Beaufort County, and the Secretary of Cultural Resources or designee. The initial members of the Commission shall be the members of the present Historic Bath Commission who shall serve for a period equal to the remainder of their current terms on the Historic Bath Commission. At the end of the respective terms of office of the initial members of the Commission, the appointments of their successors, with the exception of the ex officio members, shall be for terms of five years and until their successors are appointed and qualify. Any appointments to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 98.)

Part 21. Historic Hillsborough Commission.

§ 143B-103. Historic Hillsborough Commission—creation, powers, and duties.—There is hereby recreated the Historic Hillsborough Commission. The Historic Hillsborough Commission shall have the following powers:

- (1) In cooperation with the Hillsborough Historical Society, the elected officials of Hillsborough and Orange County, and appropriate public agencies, to use every legal aid and method to preserve and restore the Town of Hillsborough, and its immediately adjacent area, as a living, functioning, educational, and historical exhibit of North Carolina's early life and times;
- (2) To acquire and to dispose of property, real and personal; to repair, restore, or otherwise improve such properties; to have prepared a history of the town and area; and to write, compile, publish, or sponsor such historical works as may pertain to the town and area; and
- (3) To carry on other programs reasonably related to these purposes. (1973, c. 476, s. 100.)

§ 143B-104. Historic Hillsborough Commission—status.—The Historic Hillsborough Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-103 through G.S. 143B-107. (1973, c. 476, s. 101.)

§ 143B-105. Historic Hillsborough Commission—reports.—The Historic Hillsborough Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 102.)

§ 143B-106. Historic Hillsborough Commission—members; selection; quorum; compensation.—The Historic Hillsborough Commission shall consist of not fewer than 25 members appointed by the Governor plus, ex officio, the Mayor of the Town of Hillsborough, the Chairman of the Board of Commissioners of Orange County, the Orange County Register of Deeds, the Orange County Clerk of Superior Court, and the Secretary of Cultural Resources or designee. The initial appointed members of the Commission shall be the members of the present Historic Hillsborough Commission who shall serve for a period equal to the remainder of their current terms on the Historic Hillsborough Commission. At the end of the respective terms of office of the present members, the appointments of members, excepting the ex officio members, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 103.)

Part 22. Historic Murfreesboro Commission.

§ 143B-107. Historic Murfreesboro Commission—creation, powers, and duties.—There is hereby recreated the Historic Murfreesboro Commission. The Historic Murfreesboro Commission shall have the following powers:

- (1) To acquire and dispose of title to or interests in historic properties in

and near the Town of Murfreesboro, and to repair, restore, or otherwise improve and maintain such properties;

- (2) To conduct research and planning to carry out a program for the preservation of historic sites, buildings, or objects in and near the Town of Murfreesboro;
- (3) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 105.)

§ 143B-108. Historic Murfreesboro Commission—status.—The Historic Murfreesboro Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-107 through G.S. 143B-111. (1973, c. 476, s. 106.)

§ 143B-109. Historic Murfreesboro Commission—reports.—The His-
ings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not re-
toric Murfreesboro Commission shall submit an annual report of its activities, hold-
ceived by the Secretary, or if such report does not indicate the need for the con-
tinuation of the Commission, the Secretary of Cultural Resources is authorized to
recommend to the next General Assembly the abolition of the Commission. (1973,
c. 476, s. 107.)

**§ 143B-110. Historic Murfreesboro Commission—members; selec-
tion; quorum; compensation.**—The Historic Murfreesboro Commission shall
consist of 30 members appointed by the Governor plus, ex officio, the Mayor of
the Town of Murfreesboro, the Chairman of the Board of Commissioners of the
County of Hertford, the President of Chowan College, and the Secretary of Cul-
tural Resources or designee. The initial appointed members of the Commission
shall be the members of the present Historic Murfreesboro Commission who shall
serve for a period equal to the remainder of their current terms on the Historic
Murfreesboro Commission. At the end of the respective terms of office of the initial
members of the Commission, the appointments of their successors, with the ex-
ception of ex officio members, shall be for terms of five years and until their suc-
cessors are appointed and qualify. Any appointment to fill a vacancy on the Com-
mission created by the resignation, dismissal, death or disability of a member shall
be for the balance of the unexpired term. The Commission shall elect its own offi-
cers. Members of the Commission shall serve without pay and without expense
allowance from State funds. The Commission shall determine its requirements for
a quorum. (1973, c. 476, s. 108.)

Part 23. John Motley Morehead Memorial Commission.

**§ 143B-111. John Motley Morehead Memorial Commission — cre-
ation, powers, and duties.**—There is hereby recreated the John Motley More-
head Memorial Commission. The John Motley Morehead Memorial Commission
shall have the following powers:

- (1) To acquire title to or interests in property, both real and personal, and to solicit, collect, and expend funds for the acquisition, restoration, main-
tenance, and operation of a memorial to John Motley Morehead in the
City of Greensboro; and to carry on other activities, including research
and publications, reasonably related to this purpose;
- (2) To convey, lease, mortgage, and otherwise dispose of real and personal
property and interests therein, as well as to accept deeds, bills of sale,
and other instruments conveying and investing title in it; and
- (3) To offer such memorial to the State of North Carolina, which memorial,
if accepted by the Department of Cultural Resources and Council of

State, may be administered as a State historic site subject to existing covenants and agreements. (1973, c. 476, s. 110.)

§ 143B-112. John Motley Morehead Memorial Commission—status.—The John Motley Morehead Memorial Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-111 through G.S. 143B-116. (1973, c. 476, s. 111.)

§ 143B-113. John Motley Morehead Memorial Commission—authorization for counties to assist.—The special approval of the General Assembly is hereby given to all appropriations of surplus or non-ad valorem tax funds that should be made and paid over to said Commission by all counties and municipalities and the same are declared to be for a public purpose and the special approval of the General Assembly is given for such appropriations. Upon the request of the Commission hereby created, the governing body of Guilford County or of the City of Greensboro may, in its discretion, make appropriations from non-ad valorem tax revenues to the Commission. (1973, c. 476, s. 112.)

§ 143B-114. John Motley Morehead Memorial Commission—reports.—The John Motley Morehead Commission shall submit to the Secretary of Cultural Resources an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant. In the event such annual report is not received by the Secretary, or if the report indicates that there is no further need for the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 113.)

§ 143B-115. John Motley Morehead Memorial Commission—members; selection; quorum; compensation.—The John Motley Morehead Memorial Commission shall consist of 19 members as follows: nine members appointed by the Governor; three members appointed by the Board of Commissioners of Guilford County; three members appointed by the City Council of Greensboro; and four ex officio members, as follows: the Secretary of Natural and Economic Resources or designee, the Superintendent of Public Instruction or designee, the State Treasurer or designee and the Secretary of Cultural Resources or designee. The initial members of the Commission shall be the members of the present John Motley Morehead Memorial Commission who shall serve for a period equal to the remainder of their current terms on the John Motley Morehead Memorial Commission. At the end of the respective terms of office of the initial members, the appointments of their successors, with the exception of the ex officio members, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 114.)

§§ 143B-116 to 143B-135: Reserved for future codification purposes.

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-136. Department of Human Resources—creation.—There is hereby recreated and reconstituted a department to be known as the "Department of Human Resources," with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 117.)

§ 143B-137. Department of Human Resources—duties.—It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of general and mental health and rehabilitation with the basic goal being to assist all citizens—as individuals, families, and communities—to achieve and maintain an adequate level of health, social and economic well-being, and dignity. (1973, c. 476, s. 118.)

§ 143B-138. Department of Human Resources—functions.—(a) The functions of the Department of Human Resources shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to general and mental health and health rehabilitation and further including those prescribed powers, duties, and functions enumerated in Article 13 of Chapter 143A of the General Statutes of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 13 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Human Resources, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

- (1) The State Board of Health,
- (2) The Salt Marsh Mosquito Advisory Commission,
- (3) The Office of Chief Medical Examiner,
- (4) The State Department of Social Services,
- (5) The State Board of Social Services,
- (6) The Advisory Committee for Medical Assistance,
- (7) The State Department of Mental Health,
- (8) The State Board of Mental Health,
- (9) The Medical Advisory Council to the State Board of Mental Health,
- (10) The Mental Health Council,
- (11) The Advisory Council on Alcoholism to the North Carolina Board of Mental Health,
- (12) The State Advisory Council to the North Carolina Medical Care Commission,
- (13) The North Carolina State Commission for the Blind,
- (14) The Blind Advisory Committee, Professional Advisory Committee,
- (15) The Vocational Rehabilitation Division,
- (16) The Eugenics Board of North Carolina,
- (17) The Governor Morehead School,
- (18) The North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf,
- (19) The North Carolina Orthopedic Hospital,
- (20) The North Carolina Cerebral Palsy Hospital,
- (21) The North Carolina Sanatoriums for the Treatment of Tuberculosis,
- (22) The Interstate Compact on Mental Health,
- (23) The Council on Mental Retardation and Developmental Disabilities,
- (24) The North Carolina Cancer Study Commission,
- (25) The Interstate Compact on Juveniles,
- (26) The North Carolina Board of Anatomy,
- (27) The Governor's Coordinating Council on Aging,
- (28) The Confederate Women's Home,
- (29) The Medical Care Commission,
- (30) The Governor's Committee on Employment of the Handicapped, and
- (31) The Human Resources Division. (1973, c. 476, s. 119.)

§ 143B-139. Department of Human Resources—head.—The Secretary of Human Resources shall be the head of the Department. (1973, c. 476, s. 120.)

§ 143B-140. Department of Human Resources—organization.—The Department of Human Resources shall be organized initially to include the Board of Human Resources, the Commission for Health Services, the Commission for Mental Health Services, the Eugenics Commission, the Commission for the Blind, the Professional Advisory Committee, the Blind Advisory Committee, the Social Services Commission, the Commission for Medical Facility Services and Licensure, the Council for Institutional Boards, the Council on Developmental Disabilities, the Governor's Coordinating Council on Aging, the Governor's Council on Employment of the Handicapped, the Governor's Advocacy Council on Children and Youth, the Mental Health Council, the Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis, the Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina, the Board of Directors of the North Carolina Orthopedic Hospital, the Board of Directors of the Governor Morehead School, the Board of Directors of the North Carolina Schools for the Deaf, the Board of Directors for the Confederate Women's Home, the Division of Health Services, the Division of Mental Health Services, the Division of Social and Rehabilitative Services, the Division of Vocational Rehabilitation Services, the Division of Blind Services, the Division of Facility Services and Licensure, the Division of Institutional Services, and such other divisions as may be established under the provisions of this Chapter. (1973, c. 476, s. 121.)

Part 2. Board of Human Resources.

§ 143B-141. Board of Human Resources.—The Board of Human Resources shall consider and advise the Secretary of Human Resources upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Human Resources in the development of major programs and recommend priorities for the programs within the Department.

The Board of Human Resources shall have such other responsibilities and shall perform such other duties as may be specifically given to it.

The Board of Human Resources shall consist of the following 15 members: the chairman of the Commission for Health Services, the chairman of the Commission for Mental Health Services, the chairman of the Social Services Commission, the chairman of the Commission for the Blind, the chairman of the Commission for Medical Facility Services and Licensure, the chairman of the Council for Institutional Boards, eight members-at-large appointed by the Governor to serve at his pleasure, and the Secretary of Human Resources who shall be a member and chairman ex officio.

The Board of Human Resources shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman.

Members of the Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 122.)

Part 3. Commission for Health Services.

§ 143B-142. Commission for Health Services—creation, powers, and duties.—There is hereby created the State Commission for Health Services of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the public health program to protect and promote public health, with the power and duty to adopt, amend, and rescind rules and regulations under, and not inconsistent with, the laws of the State necessary to carry out the provisions and purposes of this Article.

- (1) The Commission for Health Services has the following powers and duties:
 - a. To establish standards, adopt rules and regulations that may be necessary for the protection and promotion of the public health and the control of disease;
 - b. To approve rules and regulations for sanitary management adopted by the State Board of Cosmetic Art Examiners as provided by G.S. 88-23; and
 - c. To create metropolitan water districts as provided by G.S. 162A-33.
- (2) The Commission for Health Services shall have the power and duty to establish standards and adopt rules and regulations:
 - a. For the operation of home health agencies as provided by law;
 - b. Regulating sanitary conditions of establishments providing food and lodging as provided by Article 5 of Chapter 72 of the General Statutes of the State of North Carolina;
 - c. Preparing design standards to be used as a guide in approving sewage treatment devices and holding tanks for marine toilets as provided by G.S. 75A-6(o);
 - d. Relating [to] the use, storage, transportation, and disposal of radiation, radiation machines, and radioactive materials as provided by Chapter 104C of the General Statutes of the State of North Carolina;
 - e. Adopting minimum health and sanitation standards for day-care facilities as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina;
 - f. Establishing specifications for sanitary privies for schools where water-carried sewerage facilities are unavailable as provided by G.S. 115-132;
 - g. Governing the sanitation of local confinement facilities as provided by G.S. 153-53.4;
 - h. Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provision of the Clean Water Bond Bill;
 - i. Governing the distribution of dead human bodies for the purpose of promoting the study of anatomy in the State of North Carolina as provided by Article 14 of Chapter 90 of the General Statutes of the State of North Carolina; and
 - j. For the operation of nursing homes as defined in G.S. 130-9(e).
- (3) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for public health purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (4) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Health shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Health Services. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. When directed by the Department of Human Resources, local health departments shall enforce Commission for Health Services' rules and regulations under the su-

pervision of the Department of Human Resources. (1973, c. 476, s. 123.)

§ 143B-143. Commission for Health Services—members; selection; quorum; compensation.—The Commission for Health Services of the Department of Human Resources shall consist of 11 members, four of whom shall be elected by the North Carolina Medical Society and seven of whom shall be appointed by the Governor.

One of the members appointed by the Governor shall be a licensed pharmacist, one a dairyman, one a licensed veterinarian, one a licensed optometrist and one a licensed dentist. The initial members of the Commission shall be the members of the State Board of Health who shall serve for a period equal to the remainder of their current terms on the State Board of Health, three of whose appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The North Carolina Medical Society shall have the right to remove any member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor shall have the right to remove any member appointed by him for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. Vacancies on said Commission among the membership elected by the North Carolina Medical Society shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Commission among the membership appointed by the Governor shall be filled by the Governor for the unexpired term.

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 124.)

§ 143B-144. Commission for Health Services—officers.—The Commission for Health Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 125.)

§ 143B-145. Commission for Health Services—election meetings.—The meeting of the Commission for Health Services for the election of vice-chairman shall be at the first regular meeting after the joint session of the Commission for Health Services and the North Carolina Medical Society at the annual meeting of the North Carolina Medical Society each odd-numbered year. (1973, c. 476, s. 126.)

§ 143B-146. Commission for Health Services—regular and special meetings.—Each year there shall be four regular meetings of the Commission for Health Services, one of which shall be held during the annual meeting and conjointly with a general session of the North Carolina Medical Society at which time and place the annual report shall be submitted by the Secretary of Human Resources or his designee. The other three meetings shall be at such times and places as the chairman of the Commission shall designate. Special meetings of the Commission may be called by the chairman, or by a majority of the members of the Commission. (1973, c. 476, s. 127.)

Part 4. Commission for Mental Health Services.

§ 143B-147. Commission for Mental Health Services — creation, powers, and duties.—There is hereby created the Commission for Mental Health Services of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the mental health program to protect and promote mental health with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

- (1) The Commission for Mental Health Services is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 122 of the General Statutes of North Carolina for the mentally retarded, mentally ill, and inebriate, not inconsistent with the management responsibilities of the Secretary of Human Resources provided by Chapter 143A of the General Statutes of North Carolina and the Executive Organization Act of 1973.
- (2) The Commission for Mental Health Services shall have the power and duty to establish standards and adopt rules and regulations:
 - a. For the professional care of patients admitted to institutions established in accordance with Chapter 122, including the authority to establish rules and regulations not contrary to law governing the admission of persons to any State hospital or other institution under its jurisdiction which is now or may hereafter be established;
 - b. For establishing minimum standards for local community alcoholism programs as a condition for participation in State grants-in-aid authorized by G.S. 122-7.1(b);
 - c. For the establishment and operation of local mental health clinics provided by Article 2A of Chapter 122 of the General Statutes of the State of North Carolina;
 - d. For the establishment of area mental health programs provided by Article 2C of Chapter 122 of the General Statutes of North Carolina; and
 - e. For the inspection and licensing of private hospitals for the mentally disordered as provided by G.S. 122-72.
- (3) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mental health purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (4) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Mental Health shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Mental Health Services. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 129.)

§ 143B-148. Commission for Mental Health Services—members; selection; quorum; compensation.—The Commission for Mental Health Services of the Department of Human Resources shall consist of 15 members appointed by the Governor. In order that all sections of the State shall have representation on the Commission, the Governor shall name one member from each congressional district of the State and the remaining members at large. The initial

members of the Commission shall be the members of the State Board of Mental Health who shall serve for a period equal to the remainder of their current terms on the State Board of Mental Health, five of whose appointments expire April 1, 1975; five of whose appointments expire April 1, 1977; and five of whose appointments expire April 1, 1979. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. At least two of the members shall be persons duly licensed to practice medicine in North Carolina.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provision of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 130.)

§ 143B-149. Commission for Mental Health Services—officers.—The Commission for Mental Health Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 131.)

§ 143B-150. Commission for Mental Health Services—regular and special meetings.—The Commission for Mental Health Services shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members. (1973, c. 476, s. 132.)

Part 5. Eugenics Commission.

§ 143B-151. Eugenics Commission—creation, powers, and duties.—There is hereby created the Eugenics Commission of the Department of Human Resources with the power and duty to promulgate rules and regulations concerning the asexualization or sterilization of any feeble-minded or mentally diseased patient or inmate of any penal or charitable institution supported wholly or in part by the State of North Carolina or any subdivision thereof. The Commission shall also promulgate rules and regulations concerning the asexualization or sterilization of any mentally diseased or feeble-minded county resident, not an inmate of a public institution, upon the petition of the director of public welfare or other similar public official performing in whole or in part the functions of such director, or of the next of kin, or the legal guardian of such mentally defective person. The Commission shall make rules and regulations consistent with the provisions of this Chapter. Any rules and regulations heretofore adopted by the Eugenics Board shall remain in full force and effect unless and until repealed or superseded by action of the Eugenics Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 133.1.)

§ 143B-152. Eugenics Commission—members; selection; quorum; compensation.—The Eugenics Commission of the Department of Human Resources shall consist of the following five members appointed by the Governor:

- (1) The Director of the Division of Social and Rehabilitative Services,

- (2) The Director of Health Services,
- (3) The chief medical officer of an institution for the feeble-minded or insane in the State of North Carolina,
- (4) The chief medical officer of the Department of Human Resources in the area of mental health services,
- (5) The Attorney General of the State of North Carolina.

Any one of those officials may for the purpose of a single hearing delegate his power to act as a member of said Board to an assistant: Provided, said delegation is made in writing, to be included as a part of the permanent record in said case. The said Commission shall from time to time elect a chairman from its own membership and adopt and from time to time modify rules governing the conduct of proceedings before it.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 133.2.)

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission—creation, powers, and duties.—There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

- (1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108 of the General Statutes of the State of North Carolina.
- (2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
 - a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108 of the General Statutes of the State of North Carolina;
 - b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care; and
 - c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108-66.
- (3) The Social Services Commission shall have the power and duty to establish and adopt standards:
 - a. For the inspection and licensing of maternity homes as provided by G.S. 108-76;
 - b. For the inspection and licensing of all boarding homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77;
 - c. For the inspection and licensing of private child care institutions as provided by G.S. 108-78;
 - d. For the inspection and operation of jails or local confinement fa-

cilities as provided by G.S. 153-51 and Part 2 of Article 3 of Chapter 108 of the General Statutes of the State of North Carolina;

- e. For the payment of the costs of necessary day care for minor children of needy families; and
- f. For the regulation and licensing of public solicitors as provided by Article 3 of Chapter 108 of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 134.)

§ 143B-154. Social Services Commission — members; selection; quorum; compensation.—The Social Services Commission of the Department of Human Resources shall consist of seven members appointed by the Governor. The initial members of the Commission shall be the members of the State Board of Social Services who shall serve for a period equal to the remainder of their current terms on the State Board of Social Services two of whose appointments expire April 1, 1975; two of whose appointments expire April 1, 1977; and three of whose appointments expire April 1, 1979. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 135.)

§ 143B-155. Social Services Commission—regular and special meetings.—The Social Services Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call

of the chairman or upon the written request of at least four members. (1973, c. 476, s. 136.)

§ 143B-156. Social Services Commission—officers.—The Commission for Social Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 137.)

Part 7. Commission for the Blind.

§ 143B-157. Commission for the Blind—creation, powers, and duties.—There is hereby recreated the Commission for the Blind of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's rehabilitative programs for the blind with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

- (1) The Commission for the Blind is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 111 of the General Statutes of North Carolina.
- (2) The Commission for the Blind shall have the power and duty to establish standards and adopt rules and regulations for aid to the needy blind as contained in Chapter 111 of the General Statutes of North Carolina.
- (3) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for rehabilitative purposes for the blind which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (4) The Commission for the Blind shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina State Commission for the Blind shall remain in full force and effect unless and until repealed or superseded by action of the re-created Commission for the Blind. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 139.)

§ 143B-158. Commission for the Blind—members; selection; quorum; compensation.—The Commission for the Blind of the Department of Human Resources shall consist of 11 members appointed by the Governor. The initial members of the Commission shall include the members of the existing Commission for the Blind who shall serve for a period equal to the remainder of their current terms on the existing Commission for the Blind, three of whose appointments expire July 2, 1974, three of whose appointments expire July 2, 1975, and three of whose appointments expire July 2, 1977. Four of the successor appointees must meet the following qualifications: Two individuals must be licensed physicians whose practice is limited to ophthalmology appointed by the Governor from recommendations submitted by the North Carolina Medical Society and two must be optometrists appointed by the Governor from recommendations submitted by the North Carolina Optometric Society. Thereafter, these two classes of individuals must have continuous representation on the Commission. Of the initial appointments, in addition to the members of the existing Commission for the Blind, two members appointed by the Governor must be visually handicapped to the extent of being legally blind. To achieve staggered terms of the members who must be

visually handicapped, one appointment shall be for a term of six years, one shall be for a term of four years. Thereafter, at least two individuals who are visually handicapped to the extent of being legally blind must have continuous representation on the Commission for the Blind. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 140.)

§ 143B-159. Commission for the Blind—regular and special meetings.—The Commission for the Blind shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 476, s. 141.)

§ 143B-160. Commission for the Blind—officers. — The Commission for the Blind shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 142.)

Part 8. Professional Advisory Committee.

§ 143B-161. Professional Advisory Committee — creation, powers, and duties.—There is hereby recreated the Professional Advisory Committee of the Department of Human Resources. The Professional Advisory Committee shall advise the Commission for the Blind on matters concerning or pertaining to the procurement, utilization, and rendering of professional services to the beneficiaries of the Commission's aid and services. (1973, c. 476, s. 144.)

§ 143B-162. Professional Advisory Committee — members; selection; quorum; compensation. —The Professional Advisory Committee of the Department of Human Resources shall consist of six members appointed by the Governor, three of whom shall be licensed physicians whose practice is limited to ophthalmology nominated by the North Carolina Medical Society, and three optometrists nominated by the North Carolina State Optometric Society.

The initial members of the Committee shall be the members of the Professional Advisory Committee who shall serve for a period equal to the remainder of their current terms on the Professional Advisory Committee, two of which expire July 2, 1973, two of which expire July 2, 1974, and two of which expire July 2, 1975. At the end of the respective terms of office of the initial members of the Committee, the appointment of their successors shall be for terms of three years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 145.)

Part 9. Blind Advisory Committee.

§ 143B-163. Blind Advisory Committee — creation, powers, and duties.—There is hereby recreated the Blind Advisory Committee of the Department of Human Resources. The Blind Advisory Committee shall advise the Commission for the Blind on the needs of the citizens of the State who are visually handicapped to the extent of being legally blind. (1973, c. 476, s. 146.)

§ 143B-164. Blind Advisory Committee—members; selection; quorum; compensation.—The Blind Advisory Committee of the Department of Human Resources shall consist of six members appointed by the Governor, all of whom shall be visually handicapped to the extent of being legally blind.

The initial members of the Committee shall be the members of the Blind Advisory Committee who shall serve for a period equal to the remainder of their current terms on the Blind Advisory Committee, two of which expire July 2, 1973, two of which expire July 2, 1974, and two of which expire July 2, 1975. At the end of the respective terms of office of the initial members of the Committee, the appointment of their successors shall be for terms of three years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 147.)

Part 10. Commission for Medical Facility Services and Licensure.

§ 143B-165. Comission for Medical Facility Services and Licensure —creation, powers and duties.—There is hereby created the Commission for Medical Facility Services and Licensure of the Department of Human Resources with the power and duty to promulgate rules and regulations to be followed in the construction and maintenance of public and private hospitals, medical centers, and related facilities with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

- (1) The Commission for Medical Facility Services and Licensure has the duty to adopt statewide plans for the construction and maintenance of hospitals, medical centers, and related facilities, or such other as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto.
- (2) The Commission is authorized to adopt such rules and regulations as may

be necessary to carry out the intent and purposes of Article 13 of Chapter 131 of the General Statutes of North Carolina.

- (3) The Commission may adopt such reasonable and necessary standards with reference thereto as may be proper to cooperate fully with the Surgeon General or other agencies or departments of the United States and the use of funds provided by the federal government as contained and referenced in Article 13 of Chapter 131 of the General Statutes of North Carolina.
- (4) The Commission shall have the power and duty to approve projects in the amounts of grants-in-aid from funds supplied by the federal and state governments for the planning and construction of hospitals and other related medical facilities according to the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.
- (5) The Commission shall have the power and duty to adopt rules and regulations with regard to the awarding of loans and scholarships to students in accordance with the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.
- (6) The Commission has the duty to adopt rules and regulations and standards with respect to the different types of hospitals to be licensed under the provisions of Article 13A of Chapter 131 of the General Statutes of North Carolina.
- (7) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for medical facility services and licensure which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (8) The Commission shall adopt such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina Medical Care Commission shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Medical Facility Services and Licensure. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 148.)

The Medical Care Commission (now Commission for Medical Facility Services and Licensure) is a creature of the State of North Carolina. Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

And the functions it serves are concededly public functions of the State. Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

§ 143B-166. Commission for Medical Facility Services and Licensure — members; selection; quorum; compensation. — The Commission for Medical Facility Services and Licensure of the Department of Human Resources shall consist of 17 members appointed by the Governor. Three of the members appointed by the Governor shall be nominated by the North Carolina Medical Society, one member shall be nominated by the North Carolina Nurses Association, one member shall be nominated by the North Carolina Pharmaceutical Association, one member nominated by the Duke Foundation and one member nominated by the North Carolina Hospital Association. The remaining 10 members of the Commission for Medical Facility Services and Licensure shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interest groups in North Carolina. One such member appointed by the Governor shall be a dentist licensed to practice in North Carolina. The initial members of the Commission shall be 18 members of the North Carolina Medical Care Commission who shall serve for a period equal to the remainder of their current terms on the North Carolina Medical Care Commission, six of whose appoint-

ments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. To achieve the required 17 members the Governor shall appoint three members to the Commission upon the expiration of four members initial terms on June 30, 1973. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

Vacancies on said Commission among the membership nominated by a society, association, or foundation as hereinabove provided shall be filled by the Executive Committee or other authorized agent of said society, association or foundation until the next meeting of the society, association or foundation at which time the society, association or foundation shall nominate a member to fill the vacancy for the unexpired term.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 149.)

§ 143B-167. Commission for Medical Facility Services and Licensure—regular and special meetings.—The Commission for Medical Facility Services and Licensure shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least nine members. (1973, c. 476, s. 150.)

§ 143B-168. Commission for Medical Facility Services and Licensure—officers.—The Commission for Medical Facility Services and Licensure shall have a chairman and vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 151.)

Part 11. Council for Institutional Boards.

§ 143B-169. Council for Institutional Boards — creation, powers and duties.—There is hereby created the Council for Institutional Boards of the Department of Human Resources. The Council for Institutional Boards shall have the following functions and duties :

- (1) To investigate the development of uniform policies relating to the operation and management of all of the institutions represented on the Council and make recommendations to the Secretary of Human Resources concerning the implementation of those policies ;
- (2) To provide a clearinghouse function to facilitate inter-institutional communication for the purpose of exchanging information that might be helpful to other council member institutions ;
- (3) To provide representation for the institutions on the Board of Human Resources ; and
- (4) To consider and advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 153.)

§ 143B-170. Council for Institutional Boards—members; selection; quorum; compensation.—The Council for Institutional Boards of the Department of Human Resources shall consist of the chairman respectively of the following bodies:

- (1) The Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis;
- (2) The Board of Directors of the North Carolina Orthopedic Hospital;
- (3) The Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina;
- (4) The Board of Directors of the Governor Morehead School;
- (5) The Board of Directors of the North Carolina Schools for the Deaf; and
- (6) The Board of Directors of the Confederate Women's Home.

Members shall serve on the Council for the same terms they serve as chairman of their respective institutional boards.

A majority of the members of the Council shall constitute a quorum for the transaction of business.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 154.)

§ 143B-171. Council for Institutional Boards—officers.—The Council for Institutional Boards shall elect from its membership a chairman and such other officers as it deems necessary. The chairman shall serve for a period of one year unless his term as chairman of one of the representative institutional boards is terminated sooner, in which case, the Council shall elect a successor. The chairman may succeed himself at the pleasure of the Council. (1973, c. 467, s. 155.)

§ 143B-172. Council for Institutional Boards—regular and special meetings.—The Council for Institutional Boards shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 156.)

Part 12. Boards of Directors of Institutions.

§ 143B-173. Boards of Directors of Institutions—creation, powers and duties.—(a) There are hereby created the following Boards of Directors of Institutions:

- (1) The Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis;
- (2) The Board of Directors of the North Carolina Orthopedic Hospital;
- (3) The Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina;
- (4) The Board of Directors of the Governor Morehead School;
- (5) The Board of Directors of the North Carolina Schools for the Deaf; and
- (6) The Board of Directors of the Confederate Women's Home

with the power and duty to adopt rules and regulations to be followed in the conduct of their respective institutions.

(b) Each Board of Directors hereinabove created is authorized and empowered to establish standards and adopt rules and regulations:

- (1) For the professional care of persons admitted to institutions established in accordance with the General Statutes under their authority, including the authority to establish rules and regulations not contrary to law governing the admission of persons to any State institution under its jurisdiction which is now or may hereafter be established; and

(2) To make the institutions under their control as nearly self-supporting as shall be consistent with the purposes of their creation.

(c) The Board of Directors of each institution is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid to such an institution which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid. (1973, c. 476, s. 157.)

§ 143B-174. Boards of Directors of Institutions—members; selection; quorum; compensation.—The Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis of the Department of Human Resources shall consist of 12 members appointed by the Governor for terms of six years. The Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina of the Department of Human Resources shall consist of nine members appointed by the Governor for terms of six years. The Board of Directors of the North Carolina Orthopedic Hospital of the Department of Human Resources shall consist of nine members appointed by the Governor for terms of six years. The Board of Directors of the Governor Morehead School of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of six years. The Board of Directors of the North Carolina Schools for the Deaf of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of four years. The Board of Directors of the Confederate Women's Home of the Department of Human Resources shall consist of seven members appointed by the Governor for terms of two years. The initial members of each of the aforementioned Boards of Directors shall be the members of the previously existing Board of Directors for each institution. The members of the various Boards of Directors shall serve for a period equal to the remainder of their current terms on their respective Boards, which are as follows: the Board of Directors of Tuberculosis Sanatoriums, four of whose appointments expire April 29, 1973, four of whose appointments expire April 29, 1975, and four of whose appointments expire April 29, 1977; the Board of Directors of the North Carolina Orthopedic Hospital two of whose appointments expire April 4, 1973, four of whose appointments expire April 4, 1975, and three of whose appointments expire April 4, 1977; the Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina three of whose appointments expire July 10, 1973, three of whose appointments expire July 10, 1975, and three of whose appointments expire July 10, 1977; the Board of Directors of the Governor Morehead School four of whose appointments expire May 1, 1973, three of whose appointments expire May 1, 1975, and four of whose appointments expire May 1, 1977; the Board of Directors of the North Carolina Schools for the Deaf all of whose appointments expire July 17, 1973; and the Board of Directors of the Confederate Women's Home all of whose appointments expire June 30, 1973. At the end of the respective terms of office of the initial members of each Board, their successors shall be appointed for terms as hereinabove delineated and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Board of Directors created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of a Board of Directors from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of each Board of Directors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of a Board of Directors shall constitute a quorum for the transaction of business.

All clerical and other services required by a Board of Directors shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 158.)

§ 143B-175. Boards of Directors of Institutions — regular and special meetings. — Each Board of Directors hereinabove created shall meet at least once in each quarter and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least a majority of its members. (1973, c. 476, s. 159.)

§ 143B-176. Boards of Directors of Institutions — officers. — Each Board of Directors shall have a chairman and a vice-chairman. The chairman of each Board of Directors shall be designated by the Governor from among the members of the Board of Directors to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of each Board and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 160.)

Part 13. Council on Developmental Disabilities.

§ 143B-177. Council on Developmental Disabilities — creation, powers, and duties. — There is hereby created the Council on Developmental Disabilities of the Department of Human Resources. The Council on Developmental Disabilities shall have the following functions and duties:

- (1) To provide advice to the Secretary of Human Resources as will facilitate the implementation of the State plan and the fulfillment of the requirements of Public Law 91-517, the Developmental Disabilities and Facilities Construction Amendment of 1970;
- (2) To study ways and means of promoting public understanding of developmental disabilities; to consider the need for new State programs and laws in the field of developmental disabilities; and to make recommendations to and advise the Secretary of Human Resources on the matters relating to developmental disabilities;
- (3) To advise in the preparation of a plan describing the quality, extent and scope of services being provided, or to be provided, to persons with developmental disabilities in North Carolina;
- (4) To examine the programs of all State agencies which provide services for persons with developmental disabilities and to make recommendations to the Secretary of Human Resources for coordination of programs to prevent duplication and overlapping of such services; and
- (5) The Council shall advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 167.)

§ 143B-178. Council on Developmental Disabilities—definitions. — The following definitions apply to this Chapter:

- (1) The term "developmental disabilities," as it is used in this Article, means such disabilities as are attributable to mental retardation, cerebral palsy, epilepsy, physically disabled, or other neurological conditions of individuals which are found to be closely related to mental retardation or which require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.
- (2) The term "services for persons with developmental disabilities," as it is used in this Article, means specialized services or special adaptions of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic rehabilitation of an individual with such a disability, and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such a disability and of his

family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities. (1973, c. 476, s. 168.)

§ 143B-179. Council on Developmental Disabilities—members; selection; quorum; compensation.—The Council on Developmental Disabilities of the Department of Human Resources shall consist of 21 members appointed by the Governor. The composition of the Council shall be as follows:

- (1) Seven members from the General Assembly and State government agencies as follows: two persons who are members of the Senate, two persons who are members of the House of Representatives, one representative of the Department of Public Education, one representative of the Department of Social Rehabilitation and Control, and one representative of the Department of Administration;
- (2) Eight members designated as consumers or representatives of consumers of services for the developmentally handicapped, of which at least three members shall be designated as representatives of advocate organizations as follows: one member from the North Carolina Association for Retarded Children, one member from the United Cerebral Palsy of North Carolina, and one member from the North Carolina Chapter of the Epilepsy Foundation of America; and
- (3) Six members at large, who by their interests and efforts have helped provide or may help provide improved services for those who are developmentally disabled, three of whom shall initially be appointed for a term of two years.

The initial members of the Council shall include the appointed members of the Council on Mental Retardation and Developmental Disabilities who shall serve for a period equal to the remainder of their current terms on the Council on Mental Retardation and Developmental Disabilities four of whose terms expire June 30, 1973, four of whose terms expire June 30, 1974, two of whose terms expire June 30, 1975, and three of whose terms expire June 30, 1976. At the end of the respective terms of office of the initial members of the Council, the appointments of all members, with the exception of those from the General Assembly and State agencies shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 169.)

Part 14. Governor's Coordinating Council on Aging.

§ 143B-180. Governor's Coordinating Council on Aging — creation, powers, and duties.—There is hereby created the Governor's Coordinating Council on Aging of the Department of Human Resources. The Governor's Coordinating Council on Aging shall have the following functions and duties:

- (1) To advise in the maintenance of a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Secretary of Human Resources for transmittal to the Governor and the General Assembly for improvements in and additions to such programs;
- (2) To advise in the study, collection, maintenance, publication and other dissemination of factual data and pertinent information relative to all aspects of aging. These include the societal, economic, education, recreation and health needs and opportunities of the aging;
- (3) To stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, about needs, resources and opportunities for the aging, and about the part they can play in improving conditions for the aging;
- (4) To serve at the agency through which various public and nonpublic organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;
- (5) To provide advice and information to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;
- (6) To encourage and assist governmental and private agencies to coordinate their efforts on behalf of the aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;
- (7) To promote employment opportunities as well as proper and adequate recreation use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;
- (8) To identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects;
- (9) To establish or help to establish demonstration programs of services to the aging; and
- (10) To advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 171.)

§ 143B-181. Governor's Coordinating Council on Aging—members; selection; quorum; compensation.—The Governor's Coordinating Council on Aging of the Department of Human Resources shall consist of 21 members appointed by the Governor. The composition of the Council shall be as follows: seven members from State government agencies as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; the Chairman of the Employment Security Commission; the Executive Secretary of the Teachers' and State Employees' Retirement System; the Commissioner of Labor; one representative of the Department of Public Education; and one representative of the Department of Natural and Economic Resources; the Director of the School of Public Health of the University of North Carolina; the Director of Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 11 members-at-large, all of whom shall be over the age of 65, four of whom shall derive their chief source of income from Social Security payments.

The initial members of the Council shall be appointed to include the appointed members of the Governor's Coordinating Council on Aging who shall serve for a period equal to the remainder of their current terms on the Governor's Coordinating Council on the Aging, two of whose appointments expire June 30, 1973, one of whose appointment expires June 30, 1974, two of whose appointments expire June 30, 1975, and two of whose appointments expire June 30, 1976. At the end of the respective terms of office of the initial members of the Council, their successors, and the at-large members shall be appointed for terms of four years and until their successors are appointed and qualify. Thereafter, the appointments of

their successors, with the exception of those from State agencies, shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chairman to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 172.)

Part 15. Mental Health Council.

§ 143B-182. Mental Health Council—creation, powers, and duties.

—There is hereby created the Mental Health Council of the Department of Human Resources. The Mental Health Council shall have the following functions and duties:

- (1) To consider ways and means to promote mental health in North Carolina and to study needs for new legislation pertaining to mental health of the citizens of the State; and
- (2) The Mental Health Council shall advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 174.)

§ 143B-183. Mental Health Council—members; selection; quorum; compensation.—The Mental Health Council of the Department of Human Resources shall consist of 21 members appointed by the Governor. The composition of the council shall be as follows:

- (1) Nine members from the General Assembly and State government agencies as follows: two members of the Senate nominated by the President of the Senate, two members of the House of Representatives nominated by the Speaker of the House of Representatives, two representatives of the Department of Public Education, two representatives of the Department of Social Rehabilitation and Control, and one representative of the Department of Military and Veterans Affairs;
- (2) Three members designated by the respective associations to the Governor for appointment—one member representing the North Carolina Personnel and Guidance Association, one member representing the North Carolina Council on Mental Retardation and one member representing the North Carolina Council of Family Service Agencies; and
- (3) Nine members-at-large, who by their interest and efforts have helped provide or may help provide improved services for those who are mentally ill, mentally retarded, and inebriate.

The initial members of the Council shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of the Department. (1973, c. 476, s. 175.)

Part 16. Governor's Council on Employment of the Handicapped.

§ 143B-184. Governor's Council on Employment of the Handicapped — creation, powers, and duties. — There is hereby created the Governor's Council on the Employment of the Handicapped of the Department of Human Resources. The Governor's Council on the Employment of the Handicapped shall have the following functions and duties:

- (1) To advise and assist the Department on the continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizen of North Carolina by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field;
- (2) To work in close cooperation with the President's Committee on the Employment of the Physically Handicapped to carry out more effectively the purpose of Article 29A of Chapter 143 of the General Statutes, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped;
- (3) To promote and encourage the holding of appropriate ceremonies throughout the State during the "National Employ the Physically Handicapped Week" the purpose of which ceremony shall be to enlist public support for interest in the employment of the physically handicapped; and
- (4) The Council shall advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 177.)

Cross Reference.—As to the powers and Committee) on Employment of the Handicapped of the Governor's Council (formerly capped, see also § 143-283.1 et seq.

§ 143B-185. Governor's Council on Employment of the Handicapped — members; selection; quorum; compensation. — The Governor's Council on Employment of the Handicapped of the Department of Human Resources shall consist of 21 members appointed by the Governor. The composition of the Council shall be as follows: three members from State government agencies as follows: the Commissioner of Labor, the Commissioner of Insurance and the Chairman of the Employment Security Commission; and 18 members to be appointed by the Governor.

The initial members of the Council shall include the appointed members of the Governor's Executive Committee on the Employment of the Handicapped who shall serve for a period equal to the remainder of their current terms on the Governor's Executive Committee, five of whose appointments expire June 30, 1973, five of whose appointments expire June 30, 1974, and five of whose appointments expire June 30, 1975. At the end of the respective terms of office of the initial members of the Council, the appointment of all members, with the exception of those from State agencies, shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 178.)

Part 17. Governor's Advocacy Council on Children and Youth.

§ 143B-186. Governor's Advocacy Council on Children and Youth—creation, powers, and duties.—There is hereby created the Governor's Advocacy Council on Children and Youth of the Department of Human Resources. The Governor's Advocacy Council on Children and Youth shall have the following functions and duties:

- (1) To act as an advocate for youth within State and local governments;
- (2) To conduct a continuing review of existing programs of State Government for children and youth;
- (3) To aid State and local agencies in the coordination of existing services and other duties specified in G.S. 143B-111; and
- (4) To advise the Secretary of Human Resources any matter the Secretary may refer to it. (1973, c. 476, s. 180.)

Cross Reference.—As to the powers and (formerly Commission) on Children and duties of the Governor's Advocacy Council Youth, see also §§ 110-65, 110-66, 110-71.

§ 143B-187. Governor's Advocacy Council on Children and Youth—members; selection; quorum; compensation.—The Governor's Advocacy Council on Children and Youth of the Department of Human Resources shall consist of 17 members appointed by the Governor. The composition of the Council shall be as follows: two members of the Senate nominated by the President of the Senate; two members of the House of Representatives nominated by the Speaker of the House of Representatives; the State Superintendent of Public Instruction; a member nominated by the Secretary of the Department of Social Rehabilitation and Control from the area of juvenile correction; seven other adults appointed by the Governor; and four youths appointed by the Governor; of which two shall be male and two female.

In selecting the seven adult citizen members of the Commission, the Governor shall include persons who have an interest in and knowledge of children and youth, persons who work with children, and representatives of organizations concerned with problems on children and youth. In selecting the youth members, the Governor shall appoint two who are between the ages of 16 and 21 years of age and two who are less than 16 years of age at the time of their appointments.

The initial members of the Council shall be the appointed members of the Governor's Advocacy Commission for Children and Youth who shall serve for a period equal to the remainder of their current terms on the Governor's Advocacy Commission for Children and Youth. Of the adult members of the Governor's Advocacy Commission for Children and Youth, the terms of two members expire July 1, 1973; the terms of two members expire July 1, 1974; the term of one member expires July 1, 1975; and the term of two members expire July 1, 1976. Of the youth members the term of two members expires July 1, 1973 and the term of two members expire July 1, 1974. At the end of the respective terms of office of the initial members of the Council, the appointment of all members with the exception of those from State agencies, shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, death, dismissal, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 181.)

Part 18. Council on Sickle Cell Syndrome.

§ 143B-188. Council on Sickle Cell Syndrome—appointment.—A Council on Sickle Cell Syndrome shall be appointed by the Governor to determine the needs and to make recommendations for legislative action with regard to sickle cell syndrome and related genetic disorders. (1973, c. 570, s. 1.)

Editor's Note. — Session Laws 1973, c. 570, s. 9½ provides: "Effective July 1, 1974, the Council is transferred to the Department of Human Resources, and the function of the Council shall be carried out by said Department in the same manner

as provided in section 9 and each subsection of the same as appears in Chapter 476 of the 1973 Session Laws, and the codifiers of the Statutes shall insert the appropriate General Statute Chapter and Section."

§ 143B-189. Council on Sickle Cell Syndrome—membership.—In making the appointments, due consideration should be given to persons representing the following areas:

- (1) Members of community foundations interested in sickle cell syndrome and related disorders;
- (2) Public health officials; federal, State and local officials from offices concerned with rehabilitation and social services;
- (3) Faculty of universities and staff of hospitals;
- (4) Members of local and State school boards;
- (5) Patients with, or relatives of patients with sickle cell disease. (1973, c. 570, s. 2.)

§ 143B-190. Council on Sickle Cell Syndrome—composition; expenses.—The Council shall consist of a temporary chairman appointed by the Governor and 14 other members. They shall serve without compensation except for reimbursement for travel and expenses in pursuit of the business of the Council. (1973, c. 570, s. 3.)

§ 143B-191. Council on Sickle Cell Syndrome—staff; office space.—The Council shall be empowered to employ a staff and to obtain office space. (1973, c. 570, s. 4.)

§ 143B-192. Council on Sickle Cell Syndrome—powers and duties.—The work-scope of the Council shall involve the following:

- (1) Assess the needs of the State with regard to:
 - a. Education of the people about sickle cell syndrome and related genetic disorders;
 - b. Personnel and facilities available for the treatment of patients with sickle cell syndrome and related genetic disorders;
 - c. Mechanisms for assisting in the payment of medical expenses incurred by sickle cell syndrome and related genetic disorders;
 - d. Rehabilitation of patients with sickle cell syndrome and related genetic disorders;

- e. Discrimination against patients with sickle cell syndrome in employment, insurance and other activities;
- f. Establishment of centers for testing for sickle cell syndrome and related genetic disorders;
- g. Special education and counsel of those tested in such centers;
- h. Research in the diagnosis and treatment of sickle cell syndrome and other related genetic disorders;
- i. Critique of present organizations with interest in sickle cell disease.

(2) The Council shall study programs currently active concerning sickle cell syndrome and related genetic disorders and shall make recommendations for legislation which would coordinate the currently active programs with those recommended in the "work-scope of the Council."

(3) The Council shall consult with and advise the North Carolina Department of Human Resources regarding the establishment of programs for and the promulgation of rules and regulations governing education, voluntary testing and adequate counselling for sickle cell syndrome and related genetic disorders.

(4) Upon completion of the study, the Council shall recommend to the legislature such appropriate legislation as will best serve the needs of the people of North Carolina with regard to sickle cell syndrome and related genetic disorders. (1973, c. 476, s. 128; c. 570, s. 5.)

§ 143B-193. Council on Sickle Cell Syndrome—rules and regulations.

—The North Carolina Department of Human Resources is hereby authorized, after consultation with the Council on Sickle Cell Syndrome, to promulgate rules and regulations providing for the establishment and operation of programs providing education, voluntary testing, and adequate counselling for sickle cell syndrome and related genetic disorders. "Sickle cell syndrome" includes sickle cell disease, sickle cell trait, sickle cell thalassemia, and variants. (1973, c. 476, s. 128; c. 570, s. 6.)

§ 143B-194. Secretary of Human Resources to initiate pilot programs.—The Secretary of Human Resources is hereby authorized to initiate pilot programs for education, voluntary testing, and counselling for and about sickle cell syndrome and related genetic disorders. (1973, c. 476, s. 128; c. 570, s. 7.)

§ 143B-195. Duties of local health departments and Department of Human Resources to persons affected by sickle cell syndrome.—If any individual is found to have any aspect of the sickle cell syndrome or related genetic disorders, it shall be the duty of the local health department to inform the individual to that effect. It shall be the duty of the North Carolina Department of Human Resources to make available testing and counselling services to any persons so requesting testing relative to sickle cell syndrome or related genetic disorders, their characteristics, symptoms, traits, effects and treatments. Such testing and counselling by the North Carolina Department of Human Resources and local health departments shall be furnished without cost to persons requesting it. (1973, c. 476, s. 128; c. 570, s. 8.)

§ 143B-196. When testing program to begin; counsellors.—Any program for voluntary testing shall begin no sooner than 60 days after the implementation of an adequate and effective educational program. Counselling shall be done only by persons adequately trained and certified according to criteria established by recognized authorities in the field of human genetics. (1973, c. 570, s. 9.)

§§ 143B-197 to 143B-216: Reserved for future codification purposes.

ARTICLE 4.

Department of Revenue.

Part 1. General Provisions.

§ 143B-217. Department of Revenue—creation.—There is hereby re-created and reestablished a department to be known as the “Department of Revenue” with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 184.)

§ 143B-218. Department of Revenue—duties.—It shall be the duty of the Department to collect and account for the State’s tax funds, to insure uniformity of administration of the tax laws and regulations, to conduct research on revenue matters, and to exercise general and specific supervision over the valuation and taxation of property throughout the State. (1973, c. 476, s. 185.)

§ 143B-219. Department of Revenue—functions.—(a) The functions of the Department of Revenue shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to revenue collection, tax research, tax settlement, and property tax supervision including those prescribed powers, duties and functions enumerated in Article 16 of Chapter 143A of the General Statutes of this State.

(b) All functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 16 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Revenue, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

- (1) The Commissioner and Department of Revenue,
- (2) The Department of Tax Research, and
- (3) The State Board of Assessment. (1973, c. 476, s. 186.)

§ 143B-220. Department of Revenue—head.—The Secretary of Revenue shall be the head of the Department. (1973, c. 476, s. 187.)

§ 143B-221. Department of Revenue—organization.—The Department of Revenue shall be organized initially to include the Property Tax Commission, the Division of Inheritance and Gift Tax, Division of Privilege License, Beverage and Cigarette Tax, Division of Corporate Income and Franchise Tax, Division of Individual Income Tax, Division of Sales and Use Tax, Division of Intangibles Tax, Division of Gasoline Tax, Division of Audit and Collection, Division of Accounts, Division of Planning and Processing, the Division of Tax Research, the Ad Valorem Tax Division, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973.

The Secretary of Revenue may create and appoint committees and councils to consult with and advise him and the subordinate officers of the Department on matters relating to the duties, responsibilities, or functions of the Department; and he may disband any such committee or council at his pleasure. (1973, c. 476, s. 188.)

Part 2. Property Tax Commission.

§ 143B-222. Property Tax Commission—creation, powers, and duties.—There is hereby created the Property Tax Commission with the authority to hear and decide appeals concerning the appraisal of the property of public service companies (as defined in G.S. 105-333) and to act as a State board of equalization and review for the valuation and taxation of property in the State as provided for in G.S. 105-290. The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations heretofore adopted by the State Board of Assessment shall remain in full force and effect

unless and until repealed or superseded by action of the Property Tax Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Revenue. (1973, c. 476, s. 189.)

§ 143B-223. Property Tax Commission—members; selection; quorum; compensation.—The Property Tax Commission of the Department of Revenue shall consist of five members with three appointed by the Governor and one each appointed by the Lieutenant Governor and the Speaker of the House. The initial members of the Commission shall be the appointed members of the State Board of Assessment who shall serve for a period equal to the remainder of their current term on the State Board of Assessment, one of whose term expires July 1, 1973, and three of whose terms expire July 1, 1975. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms for four years and until their successors are appointed and qualify. To achieve the staggered terms, the Governor shall make two appointments on July 1, 1973, each for four years and one appointment on July 1, 1975, for four years. The Lieutenant Governor and the Speaker of the House shall make their respective appointments on July 1, 1975, for four years. Thereafter, the appointment of their successors shall be for terms of four years.

Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the right to remove any member for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Revenue. (1973, c. 476, s. 190.)

§ 143B-224. Property Tax Commission—officers.—The Property Tax Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 191.)

§ 143B-225. Property Tax Commission—regular and special meetings.—The Property Tax Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least three members. At least 15 days' reasonable notice shall be given to each member with respect to each special meeting. (1973, c. 476, s. 192.)

§§ 143B-226 to 143B-245: Reserved for future codification purposes.

ARTICLE 5.

Department of Military and Veterans Affairs.

Part 1. General Provisions.

§ 143B-246. Department of Military and Veterans Affairs—creation.—There is hereby recreated and reconstituted a department to be known as the "Department of Military and Veterans Affairs," with the organization, powers, and duties hereafter defined in the Executive Organization Act of 1973. (1973, c. 620, s. 1.)

§ 143B-247. Department of Military and Veterans Affairs—duties.—It shall be the duty of the Department to provide national guard troops trained by the State to federal standards; to insure the preparation, coordination, and currency of military and civil preparedness plans and the effective conduct of emergency operations by all participating agencies to sustain life, prevent, minimize, or remedy injury to persons and damage to property resulting from disasters caused by enemy attack or other hostile actions or from disasters due to natural or man-made causes; and to provide assistance to veterans, their families, and their dependents, in obtaining or maintaining privileges, rights, and benefits to which they are entitled under federal, State, or local laws. (1973, c. 620, s. 2.)

§ 143B-248. Department of Military and Veterans Affairs—functions.—(a) The functions of the Department of Military and Veterans Affairs shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all functions of the executive branch of the State in relation to military and veterans affairs delineated in the foregoing section and further including those prescribed powers, duties, and functions enumerated in Article 18 of Chapter 143A of the General Statutes.

(b) All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 18 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Military and Veterans Affairs, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

- (1) The Adjutant General's Department,
- (2) The State Civil Defense Agency,
- (3) The State Civil Air Patrol,
- (4) The Department of Veterans Affairs,
- (5) The State Board of Veterans Affairs,
- (6) The Armory Commission, and
- (7) The National Guard Mutual Assistance Compact. (1973, c. 620, s. 3.)

§ 143B-249. Department of Military and Veterans Affairs—head.—The Secretary of Military and Veterans Affairs shall be the head of the Department. (1973, c. 620, s. 4.)

§ 143B-250. Department of Military and Veterans Affairs—organization.—The Department of Military and Veterans Affairs shall be organized initially to include the Veterans Affairs Commission, the Division of Veterans Affairs, the Division of Civil Preparedness, the Division of Civil Air Patrol, the Division of the National Guard, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 620, s. 5.)

§ 143B-251. Department of Military and Veterans Affairs—confidentiality of records.—Notwithstanding any other provisions of the Executive Reorganization [Organization] Act of 1973, no records of the Department of Military and Veterans Affairs shall be disclosed or used for any purpose except official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. Nothing in this act [Article] shall convert records which are the property of the federal government into State property. (1973, c. 620, s. 6.)

Part 2. Veterans Affairs Commission.

§ 143B-252. Veterans Affairs Commission—creation, powers, and duties.—There is hereby created the Veterans Affairs Commission of the Department of Military and Veterans Affairs. The Veterans Affairs Commission shall have the following functions and duties:

- (1) To advise the Secretary of Military and Veterans Affairs on matters relating to the Department's activities with respect to veterans;
- (2) To maintain a continuing review of the operation of existing programs for veterans and their dependents in the State and to make any recommendations to the Secretary of Military and Veterans Affairs for improvements and additions to such programs to which the Secretary shall give due consideration;
- (3) To serve collectively as a liaison between the Department and the veterans organizations represented on the Commission;
- (4) To promulgate rules and regulations concerning the awarding of scholarships for children of North Carolina veterans as provided by Article 4 of Chapter 165 of the General Statutes of North Carolina. The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the State Board of Veterans Affairs shall remain in full force and effect unless and until repealed or superseded by action of the Veterans Affairs Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Military and Veterans Affairs; and
- (5) To advise the Secretary of Military and Veterans Affairs on any matter the Secretary may refer to it. (1973, c. 620, s. 7.)

§ 143B-253. Veterans Affairs Commission—members; selection; quorum; compensation.—The Veterans Affairs Commission shall consist of five voting members all of whom shall be veterans, appointed by the Governor for five-year terms. In making these appointments, the Governor shall insure that both major political parties will be continuously represented on the Veterans Affairs Commission.

Initial members of the Commission shall be the appointed members of the present State Board of Veterans Affairs who shall serve for a period equal to the remainder of their current terms on the State Board of Veterans Affairs, one of whose appointment expires May 16, 1973; one of whose appointment expires May 16, 1974; one of whose appointment expires May 16, 1975; one of whose appointment expires May 16, 1976; and one of whose appointment expires May 16, 1977. At the end of the respective terms of office of the initial members of the Commission, the appointments of all members shall be for terms of five years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Commission from office in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. In addition to the five members appointed by the Governor, the Department Commander or official head of each veterans organization which has been chartered by an act of the United States Congress and is legally constituted and operating in this State pursuant to said Chapter may serve, at his option, as an ex officio, non-voting member of the Commission.

The Governor shall designate one member of the Commission to serve as chairman to serve at the pleasure of the Governor.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

The Veterans Affairs Commission shall meet at least twice per year and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least three members.

All clerical and other services required by the Commission shall be provided by the Secretary of Military and Veterans Affairs. (1973, c. 620, s. 8.)

Chapter 145.

State Flower, Bird, Tree, Shell, Mammal, Fish, Insect and Stone.

Sec.

145-7. State insect.

Sec.

145-8. State stone.

§ 145-7. State insect. — The honeybee is hereby adopted as the official State insect of the State of North Carolina. (1973, c. 55.)

§ 145-8. State stone. — The emerald is hereby adopted as the official State precious stone of the State of North Carolina. (1973, c. 136, s. 1.)

Editor's Note. — Session Laws 1973, c. 136, s. 2, provides: "This act shall become effective upon the opening of the National Gem Show in Charlotte June 28, 1973."

Chapter 146.

State Lands.

SUBCHAPTER III. ENTRIES AND
GRANTS.

Article 9.

General Provisions.

Sec.

146-37. Intent of Subchapter.

SUBCHAPTER IV. MISCEL-
LANEOUS.

Article 14.

General Provisions.

Sec.

146-65. Exemptions from Chapter.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 2.

Dispositions.

§ 146-3. What lands may be sold.

Editor's Note. — For note on defining public trust doctrine in North Carolina, see navigable waters and the application of the 49 N.C.L. Rev. 888 (1971).

§ 146-6.1. Protection of marshes and tidelands.

Editor's Note. — For note on preservation of the estuarine zone, see 49 N.C.L. Rev. 964 (1971).

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration.

Applied in State v. Johnson, 282 N.C. 1, 191 S.E.2d 641 (1972).

§ 146-24. Procedure for purchase or condemnation.

(c) If negotiations for the purchase of the land are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right of eminent domain and acquire any such land by condemnation in the same manner as is provided for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes. Upon approval by the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. Approval by no other State agency shall be required as a prerequisite to the exercise of the power of eminent domain by the Department. (1957, c. 584, s. 6; G.S., s. 146-105; 1959, c. 683, s. 1; 1967, c. 512, s. 1; 1973, c. 507, s. 5.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 146-26.1. Relocation assistance. — In the acquisition of any real property by the Department of Administration for a public use, the Department of Administration shall be vested with the same authority as is given the Board of Trans-

portation in Article 13 of Chapter 136 of the General Statutes. (1971, c. 540; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

Article 13 of Chapter 136, referred to in

this section, was repealed by Session Laws 1971, c. 1107. For present provisions covering the subject matter of the repealed Article, see §§ 133-5 through 133-17.

ARTICLE 7.

Dispositions.

§ 146-30. Application of net proceeds.

Service Charge Not Applicable in Gift of Trust Situation Described.—See opinion of Attorney General to Mr. Carroll L. Mann,

Jr., Property Control and Construction Division, Department of Administration, 41 N.C.A.G. 738 (1972).

SUBCHAPTER III. ENTRIES AND GRANTS.

ARTICLE 9.

General Provisions.

§ 146-37. Intent of Subchapter.

Editor's Note. — For note on defining navigable waters and the application of the

public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

ARTICLE 13.

Grants Vacated.

§ 143-63. Action by State to vacate grants.

Editor's Note.—

For note on defining navigable waters and the application of the public trust doc-

trine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-64. Definitions.

Editor's Note.—

For note on defining navigable waters and the application of the public trust doc-

trine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

§ 146-65. Exemptions from Chapter.—None of the provisions of Chapter 146 shall apply to:

- (1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation; or
- (2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G.S. 143-216 through G.S. 143-228.1 or to the exercise of all or any of such authority and powers,

Nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement. (1957, c. 584, s. 6; G.S., s. 146-112; 1959, c. 683, s. 1; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board

of Transportation" for "State Highway Department" in subdivision (1).

Chapter 147.

State Officers.

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.—The salary of the Governor shall be forty-five thousand dollars (\$45,000) per annum, payable monthly. He shall be paid annually the sum of five thousand dollars (\$5,000) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600.)

Editor's Note.—

The 1971 amendment substituted "thirty-eight thousand five hundred dollars (\$38,500.00)" for "thirty-five thousand dollars (\$35,000.00)" in the first sentence.

The 1973 amendment, effective upon the inauguration of the Governor in 1977, increased the annual salary from \$38,500 to \$45,000.

§ 147-22. Application for pardon to include record.—Any application for the pardon of a prisoner committed to the discharge of the Board of Transportation shall include a record of such prisoner since he was committed to the charge of the Board of Transportation; and in determining whether or not a parole or pardon shall be granted, consideration shall be given to the record of such prisoner; and the record of such prisoner shall be available to those making the application. (1917, c. 286, s. 20; C. S., s. 7739; 1925, c. 163; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway and Public Works Commission" and for "Commission."

§ 147-33. Compensation and expenses of Lieutenant Governor.—As authorized by Article III, Section 6 of the Constitution of North Carolina, the salary of the Lieutenant Governor is hereby fixed at thirty thousand dollars (\$30,000) per year. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of four thousand dollars (\$4,000). (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1; 1971, c. 913.)

Editor's Note.—

The 1971 amendment, effective Jan. 1, 1973 rewrote this section.

ARTICLE 3A.

Emergency War Powers of Governor.

§ 147-33.2. Emergency war powers of the Governor.—Upon his own initiative, or on the request or recommendation of the President of the United

States, the army, navy or any other branch of the armed forces of the United States, the federal Director of Civilian Defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the successful prosecution thereof, the Governor may, with the approval of the Council of State, at any time and from time to time during the existing state of war:

(8) At any time when the General Assembly is not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when he shall find and proclaim after such study, investigation or hearings as he may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:

- a. The use of the roads, streets, and highways of the State, with particular reference to speed limits, weights and sizes of motor vehicles, regulations of automobile lights and signals, transportation of munitions or explosives and parking or assembling of automobiles on highways or any other public place within the State; provided that any changes in the laws referred to in this subdivision shall be first approved by the Board of Transportation and the Commissioner of Motor Vehicles of the State;
- b. Public health, in so far as suspension or modification of the laws in reference thereto may be stipulated by the United States Public Health Service or other authoritative agency of the United States government as being essential in the interest of national safety and in the successful prosecution of the war effort; provided that such suspension or modification of public health laws shall first be submitted to and approved by the Commission for Health Services;
- c. Labor and industry; provided, however, that any suspension or modification of laws regulating labor and industry shall be only such as are certified by the Commissioner of Labor of the State as being necessary in the interest of national safety and in the furtherance of the war program; and provided further that any such changes as may result in an increase in the hours of employment over and above the limits of the existing statutory provisions shall carry provision for adequate additional compensation; and provided, further, that no changes in such laws or regulations shall be made as affecting existing contracts between labor and management in this State except with the approval of the contracting parties;
- d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State militia in addition to the existing units of the State guard; to provide transportation and facilities for mobilization and full utilization of the State guard, or other units of militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;

e. Manufacture, sale, transportation, possession and use of explosives or fireworks, or articles in simulation thereof, and the sale, use and handling of firearms;

(1973, c. 476, s. 128; c. 507, s. 5.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Commission for Health Services" for "State Board of Health" at the end of subdivision (8)(b).

The second 1973 amendment, effective July 1, 1973, substituted "Board of Trans-

portation" for "State Highway Commission" in subdivision (8)a.

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivision (8) are set out.

ARTICLE 4.

Secretary of State.

§ 147-35. Salary of Secretary of State.—The salary of the Secretary of State shall be thirty-one thousand dollars (\$31,000) a year, payable monthly. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, increased the salary from \$25,000 to \$31,000.

§ 147-45. Distribution of copies of State publications.—The Secretary of State (and the Administrative Officer of the Courts, with respect to Appellate Division Reports) shall, at the State's expense, as soon as possible after publication, distribute such number of copies of the Session Laws, and Senate and House Journals, to federal, State and local governmental officials, departments and agencies, and to educational institutions for instructional and exchange use, as is set out in the table below:

	Session Laws	House and Senate Journals	Appellate Division Reports
State Departments and Officials:			
Governor	3	1	1
Lieutenant Governor	1	1	1
Auditor	3	1	1
Treasurer	3	1	1
Secretary of State	3	1	1
Superintendent of Public Instruction	3	1	1
Attorney General	10	1	11
Commissioner of Agriculture	3	1	1
Commissioner of Labor	3	1	1
Commissioner of Insurance	3	1	1
Department of Human Resources [Commission for Health Services]	3	1	0
Board of Transportation	3	1	1
Department of Human Resources [Social Services Commission]	3	1	0
Adjutant General	2	0	0
Commissioner of Banks	2	0	0
Secretary of Revenue	5	0	1

	Session Laws	House and Senate Journals	Appellate Division Reports
Commissioner of Motor Vehicles	1	0	0
Utilities Commission	8	1	8
State School Commission	2	0	0
State Board of Elections	2	0	0
Local Government Commission	2	0	1
Budget Bureau	2	1	1
State Bureau of Investigation	1	0	1
Director of Probation	2	0	1
Commissioner of Paroles	2	0	1
Department of Conservation and Development	3	1	0
Veterans' Loan Commission	1	0	0
Industrial Commission	7	0	11
State Board of Alcoholic Beverage Control	2	0	0
Division of Purchase and Contract	2	0	0
Division of Property Control	1	0	1
Justices of the Supreme Court	1	1	1
Judges of the Court of Appeals	each	each	each
Clerk of the Supreme Court	1	1	1
Clerk of the Court of Appeals	each	each	each
Judges of the Superior Court	1	1	0
Emergency Judges of the Superior Court	each	0	each
Special Judges of the Superior Court	1	0	1
Solicitors of the Superior Court	each	0	each
Employment Security Commission	1	1	1
State Employment Service	1	0	0
Department of Human Resources [Commission for the Blind]	1	0	1
State Prison	1	0	0
Western North Carolina Sanatorium	1	0	0
Eastern North Carolina Sanatorium	1	0	0
Department of Cultural Resources [North Carolina Historical Commission]	3	0	0
Department of Cultural Resources [State Li- brary]	5	5	3
Legislative Building Library	25	15	2
Supreme Court Library			as many as requested
Appellate Division Reporter	0	0	1
State Soil and Water Conservation Commit- tee	1	0	0
General Assembly Members and Officials:			
Representatives of General Assembly	1	1	0
State Senators	each	each	0
Principal Clerk—Senate	1	1	0
Reading Clerk—Senate	1	1	0
Sergeant at Arms—Senate	1	1	0

	Session Laws	House and Senate Journals	Appellate Division Reports
Principal Clerk—House	1	1	0
Reading Clerk—House	1	1	0
Sergeant at Arms—House	1	1	0
Enrolling Clerk	1	0	0
Engrossing Clerk—House	1	1	0
Indexer of the Laws	1	0	0
Schools and Hospitals:			
University of North Carolina at Chapel Hill	65	56	71
University of North Carolina at Charlotte ..	3	1	1
North Carolina State University at Raleigh ..	5	1	1
University of North Carolina at Greensboro ..	3	1	1
Duke University	25	25	25
Davidson College	1	1	1
Wake Forest University	5	5	25
Western Carolina University	1	1	1
Appalachian State University	1	1	1
Lenoir Rhyne College	1	1	1
Elon College	1	1	1
Guilford College	1	1	1
Wingate College	1	1	0
Pfeiffer College	1	1	0
Barbara Scotia College	1	1	0
East Carolina University	1	1	1
Catawba College	0	0	1
Atlantic Christian College	1	1	1
North Carolina School for the Deaf	1	0	0
State Hospital at Raleigh	1	0	0
Broughton Hospital	1	0	0
State Hospital at Goldsboro	1	0	0
Caswell Training School	1	0	0
School for the Blind and Deaf	1	0	0
State Normal School at Fayetteville	1	0	1
North Carolina Central University	5	5	5
Asheville-Biltmore College	1	1	1
Elizabeth City State University	1	1	0
Local Officials:			
Clerks of the Superior Courts	1 each	1 each	1 each
Register of Deeds of the Counties	1 each	0	0
Federal, Out-of-State, and Foreign Officials and Agencies:			
Secretary to President	1	0	1
Secretary of State	1	1	1
Secretary of Defense	1	0	1
Secretary of Agriculture	1	0	1
Attorney General	1	0	1
Postmaster General	1	0	1
Marshal of United States Supreme Court	1	0	1
Department of Justice	1	0	1

	Session Laws	House and Senate Journals	Appellate Division Reports
Bureau of Census	1	0	1
Treasury Department	1	0	1
Department of Internal Revenue	1	0	1
Department of Labor	1	1	1
Bureau of Public Roads	1	0	1
Department of Commerce	1	1	1
Department of Interior	1	0	1
Veteran's Administration	1	0	1
Securities and Exchange Commission	1	0	1
Social Security Board	1	0	1
Farm Credit Administration	1	0	1
Library of Congress	8	2	5
Federal Judges resident in North Carolina ..	1	0	1
	each		each
Federal District Attorneys resident in North Carolina	1	0	1
	each		each
Clerks of Federal Court resident in North Carolina	1	0	1
	each		each
Chief executives or designated libraries or governments of other states, territories and countries, including Canada, Canal Zone, Puerto Rico, Alaska and Philippine Islands, provided such governments exchange publications with the Supreme Court Library ..	1	0	1
	each		each

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for his private use one complete and up-to-date set of the Appellate Division Reports. The copies of Reports furnished each justice or judge as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of Reports.

One copy each of the Public Laws, the Public-Local Laws and the Appellate Division Reports shall be furnished the head of any department of State government created in the future.

Five complete sets of the Public Laws, the Public-Local and Private Laws, the Senate and House Journals and the Appellate Division Reports heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes.

One complete set of the Public Laws, Public-Local Laws, Private Laws, and the Senate and House Journals heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to Elizabeth City State University.

The Governor may delete from the above list, in his discretion, any government official, department, agency or educational institution.

The office of the Attorney General shall receive from the Administrative Office of the Courts 11 copies of the Court of Appeals Reports and advance sheets of the Court of Appeals Reports at no cost to the Attorney General's office. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200;

1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health," "State Board of Charities and Public Welfare" and "State Commission for the Blind," substituted "Secretary of Revenue" for "Commissioner of Revenue" and substituted "Department of Cultural Resources" for "State Department of Archives and History" and "State Library." Names of constituent agencies of the Departments of Human Resources and Cultural Resources have been inserted in brackets by the codifiers.

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

The third 1973 amendment added to the table of schools and hospitals Appalachian State University.

The fourth 1973 amendment increased the number of copies of the Appellate Division Reports to be sent to the Industrial Commission from 8 to 11.

The fifth 1973 amendment reduced the number of copies of the Session Laws and the House and Senate Journals distributed to the State Library from 23 to 5, and increased the number of copies of the Session Laws distributed to the Legislative Building Library from 2 to 25 and the number of copies of the House and Senate Journals distributed to the Legislative Building Library from 2 to 15.

Advance Sheets of Appellate Division Reports Are Required to Be Distributed to University of North Carolina at Greensboro at No Cost.—See opinion of Attorney General to Mr. Robert Grey Cole, Walter Clinton Jackson Library, University of North Carolina at Greensboro, 43 N.C.A.G. 93 (1973).

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.—Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
University of North Carolina at Charlotte	2 copies;
University of North Carolina at Greensboro	2 copies;
North Carolina State University at Raleigh	2 copies;
East Carolina University at Greenville	2 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina Central University	5 copies;
Library of Congress	2 copies;
State Library	5 copies;
Western Carolina University	2 copies;
Appalachian State University	2 copies;
University of North Carolina at Wilmington	2 copies;
North Carolina Agricultural and Technical State University ..	2 copies;
Legislative Library	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University. (1941, c. 379, s. 5; 1955, c. 505, s. 7; 1967, cc. 1038, 1065; 1969, c. 608, s. 1; c. 852, s. 3; 1973, c. 598; c. 731, s. 2; c. 776.)

Editor's Note.—

The first 1973 amendment added the provisions for the University of North Carolina at Wilmington and the North Carolina Agricultural and Technical State University.

The second 1973 amendment added the provision for Appalachian State University.

The third 1973 amendment added the provision for the Legislative Library.

Free Distribution on Request of Certain Statutory Publications to Certain Institutions.—See opinion of Attorney General to Mr. James H. Thompson, University of North Carolina at Greensboro, 42 N.C.A.G. 94 (1972).

ARTICLE 5.***Auditor.***

§ 147-55. Salary of Auditor.—The salary of the State Auditor shall be thirty-one thousand dollars (\$31,000) a year, payable monthly. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; c. 994, s. 2; 1911, c. 108, s. 1; c. 136, s. 1; 1913, c. 172; 1919, c. 149; c. 247, s. 7; C. S., s. 3867; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1.)

Editor's Note.—

The 1973 amendment, effective July 1,

1973, increased the salary from \$25,000 to

\$31,000.

§ 147-58. Duties and authority of State Auditor.—The duties and authority of the State Auditor shall be as follows:

- (20) The auditor shall charge and collect from each of the following agencies the actual cost of audit of such agency: North Carolina Rural Rehabilitation Corporation, State Board of Barber Examiners, State Board of Certified Public Accountant Examiners, State Board of Cosmetic Art Examiners, State Board of Registration for Professional Engineers and Land Surveyors, North Carolina Board of Nurse Registration and Nursing Education, North Carolina Board of Opticians, North Carolina Milk Commission, the State Banking Commission, Board of Transportation, Law Enforcement Officers Benefit and Retirement Fund, Board of Paroles, State Probation Commission, North Carolina Wildlife Resources Commission, Atlantic and North Carolina Railroad, Department of Motor Vehicles, Burial Association Commission, North Carolina Public Employees Social Security Agency, and any other agency which operates entirely within its own receipts from revenue derived from sources other than the general fund. Costs collected under this subsection shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subsection shall be deposited in the general fund as nontax revenue.
- (23) It shall be the duty of the State Auditor to make an annual audit of the accounts of the National Driving Center Foundation, Incorporated, and make a report thereof to the General Assembly. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1; 1953, c. 61; 1955, c. 576; 1957, c. 390; 1969, c. 458, s. 1; 1973, c. 507, s. 5; c. 617, s. 3.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in subdivision (20).

The second 1973 amendment, effective July 1, 1973, added subdivision (23).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (20) and (23) are set out.

ARTICLE 6.

Treasurer.

§ 147-65. Salary of State Treasurer.—The salary of the State Treasurer shall be thirty-one thousand dollars (\$31,000) a year, payable monthly. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1.)

Editor's Note.— 1973, increased the salary from \$25,000 to
The 1973 amendment, effective July 1, \$31,000.

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

Sec.

148-8.1. Laundry services.

148-9. [Repealed.]

148-10. Department of Human Resources
to supervise sanitary and health
conditions of prisoners.

Article 3.

Labor of Prisoners.

148-49. Prison indebtedness not assumed
by Board of Transportation.

Article 3A.

Facilities and Programs for Youthful Offenders.

Sec.

148-49.1. Purpose of Article.

Article 4.

Paroles.

148-59. Duties of clerks of superior courts
as to commitments; statements
filed with Board of Paroles.

ARTICLE 1.

Organization and Management.

§ 148-1. State Department of Correction; Commission of Correction; Commissioner of Correction.

Cited in Goble v. Bounds, 281 N.C. 307,
188 S.E.2d 347 (1972).

§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.

Applied in Goble v. Bounds, 281 N.C.
307, 188 S.E.2d 347 (1972).

§ 148-8.1. Laundry services.—Laundry services performed by the Department of Corrections may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Corrections, or for which services have been contracted or applied for in writing, as of May 22, 1973.

Such services shall be limited to wet-washing, drying and ironing of flatwear or flatgoods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by such institutions and further limited to only flatgoods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning method; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Corrections, be processed by a dry-cleaning method. (1973, c. 671, s. 1.)

Editor's Note.—Session Laws 1973, c. 671, s. 2, makes the act effective May 22, 1973.

§ 148-9: Repealed by Session Laws 1973, c. 476, s. 138, effective July 1, 1973.

§ 148-10. Department of Human Resources to supervise sanitary and health conditions of prisoners.

Editor's Note.—

Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this section by

substituting "Department of Human Resources" for "State Board of Health."

ARTICLE 2.

*Prison Regulations.***§ 148-11. Authority to make regulations.**

Cited in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-12. Diagnostic and classification programs.**Editor's Note.—**

Session Laws 1973, c. 803, s. 44, purported to repeal "the third unnumbered paragraph" of this section. The 1973 act

apparently intended to amend § 158-12.

Applied in State v. Streeter, 17 N.C. App. 48, 193 S.E.2d 347 (1972).

§ 148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc.**Rules as to "Good Time," etc.—**

In accord with 1971 Cum. Supp. See Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

As Are Grades Established for "Gain Time".—The grades established for "gain time" based on differences in work assignment are matters of prison administration, to be disturbed only if clearly arbitrary or capricious. Ham v. North Carolina, 471 F.2d 406 (4th Cir. 1973).

And Allowance of Gained Time.—Allowance of gained time is a discretionary act of the State prison administrative body, and their decisions as to its allowance will not be upset by the federal courts unless their actions are clearly arbitrary or capricious. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

And Courts Are Not Authorized, etc.—

In accord with 1st paragraph in 1971 Cum. Supp. See Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Nature of Honor Grade Status, Work Release Privilege and Parole. — Honor grade status, work release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

The award of honor grade status is a discretionary act of the Department of Correction, and its decisions relating to such awards are not subject to procedural due process. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

And Inmate Being So Considered Is

Not Entitled to Procedural Due Process. — An inmate being considered for honor grade status or work release, is not entitled, either under the State or federal Constitutions, to procedural due process rights. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Granting of Such Is Mitigation of Terms of Judgment. — The granting of honor grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Which Is Not Undeniable Right of Prisoner. — While a prisoner takes with him into the prison certain rights which may not be denied him, the legal right to the mitigation of his punishment is not one of them. It is contemplated as a part of his rehabilitation that he earn his right to honor grade status, work release, or parole. The decision is not in the nature of an adversary proceeding under rules of evidence. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Involves Policy Decisions to Be Decided by Department of Correction and Board of Paroles. — Whether a prisoner is entitled to honor grade status, work release, or parole involves policy decisions which should be decided by the Department of Correction and the Board of Paroles. These agencies are charged with the duty and are properly given means of discharging it not available to the courts. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-19. Health services.**Editor's Note.—**

Session Laws 1973, c. 476, s. 133, amends this section by substituting "Secretary of Human Resources" for "Commissioner of

Mental Health" and "Department of Human Resources" for "Department of Mental Health."

ARTICLE 3.*Labor of Prisoners.***§ 148-33.1. Sentencing, quartering, and control of prisoners with work release privileges.**

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Department of Correction their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Department of Correction shall retain to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him when he is paroled or discharged from prison, and shall make such disbursements from any balance of his earnings as may be found necessary by the Department for the following purposes, considered in a priority order as stated:

- (1) To pay travel and other expenses of the prisoner made necessary by his employment;
- (2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;
- (3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of social services in the county of North Carolina in which such dependents reside;
- (4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any case before such court.

In addition, the Department of Correction in its discretion may grant a request made in writing by the prisoners for a withdrawal for any other purpose.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The Social Services Commission is authorized to promulgate uniform rules and regulations governing the duties of county social services departments under this section.

(1969, c. 982; 1973, c. 476, s. 138.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Social Services Commission" for "State Board of Public Welfare" in the last paragraph of subsection (f).

Nature of Honor Grade Status, Work Release Privilege and Parole. — Honor grade status, work release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed

sentence of confinement. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Recommending Privilege, etc.—

In accord with 1971 Cum. Supp. See *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Granting Work Release Privileges Not Required. — Subsection (b) authorizes but does not require the Board of Paroles to authorize the Department of Correction to grant work release privileges to any inmate of the prison system provided that the stated conditions in the statute are met. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Decisions Are Discretionary Acts. — The decisions of the trial court and the Board of Paroles relating to the work release

privilege are discretionary acts and are not subject to procedural due process. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

And Inmate Being So Considered Is Not Entitled to Procedural Due Process.—An inmate being considered for honor grade status or work release, is not entitled, either under the State or federal Constitutions, to procedural due process rights. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Granting of Honor Grade Status, etc., Is Mitigation of Terms of Judgment.—The granting of honor grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-42. Indeterminate sentences.

Case Remanded for Imposition of Minimum Sentence.—Where the record showed that judgment of imprisonment was entered by the trial court for a term not to

Which Is Not Undeniable Right of Prisoner.—While a prisoner takes with him into the prison certain rights which may not be denied him, the legal right to the mitigation of his punishment is not one of them. It is contemplated as a part of his rehabilitation that he earn his right to honor grade status, work release, or parole. The decision is not in the nature of an adversary proceeding under rules of evidence. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Involves Policy Decisions to Be Decided by Department of Correction and Board of Paroles.—Whether a prisoner is entitled to honor grade status, work release, or parole involves policy decisions which should be decided by the Department of Correction and the Board of Paroles. These agencies are charged with the duty and are properly given means of discharging it not available to the courts. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

exceed seven years, the case was remanded for imposition of a minimum sentence. *State v. Black*, 283 N.C. 344, 196 S.E.2d 225 (1973).

§ 148-45. Escaping or assisting escape from the State prison system; escape by conditionally and temporarily released prisoners.—(a) Any prisoner serving a sentence imposed upon conviction of a misdemeanor who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year. Any prisoner serving a sentence imposed upon conviction of a felony who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years. Any prisoner convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years. Any prisoner who connives at, aids or assists other prisoners to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned at the discretion of the court. Unless otherwise specifically ordered by the presiding judge, any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the prisoner is held at the time an offense defined by this section is committed by such prisoner. Any prisoner convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felon even if such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

Editor's Note.—

Subsection (a) is set out to correct a typographical error in the 1971 Cumulative Supplement.

As subsection (b) was not affected, it is not set out.

A second escape is a felony, etc.—

In accord with 1971 Cum. Supp. See State v. Walters, 17 N.C. App. 94, 193 S.E.2d 316 (1972).

Sufficiency of Indictment.—

A bill of indictment was insufficient to charge the felony of escape while serving a felony sentence, notwithstanding the indictment used the word "felony" to describe one of the offenses for which defendant was serving sentence when he escaped, where it also alleged that sentences for both offenses were imposed in district courts, since district courts are without jurisdiction to impose sentence in felony cases; however, the indictment was sufficient to charge misdemeanor escape. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

An indictment charging that a defendant escaped while serving a sentence for a felony imposed in the superior court in a

named county is sufficient without naming the felony. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

Charges for Second Offense of Escape Must Refer to Previous Conviction of Escape. — To charge a felony for a second offense of escape, it is necessary for the bill of indictment to refer to a "previous conviction of escape from the State prison system" which is one of the necessary elements under this section. A bill of indictment which fails to contain this essential element will not support a judgment imposing sentence for a second offense of escape. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

Applied in State v. Ford, 13 N.C. App. 34, 185 S.E.2d 328 (1971); State v. Ford, 281 N.C. 62, 187 S.E.2d 741 (1972); State v. Rufty, 16 N.C. App. 192, 191 S.E.2d 242 (1972); State v. White, 16 N.C. App. 652, 192 S.E.2d 663 (1972); State v. Edwards, 282 N.C. 578, 193 S.E.2d 736 (1973); State v. Haith, 17 N.C. App. 597, 194 S.E.2d 868 (1973); State v. Carroll, 17 N.C. App. 691, 195 S.E.2d 306 (1973).

Cited in Jernigan v. State, 279 N.C. 556, 184 S.E.2d 259 (1971).

§ 148-49. Prison indebtedness not assumed by Board of Transportation. —The Board of Transportation shall not assume or pay off any part of the deficit of the State prison existing on March 22, 1933. (1933, c. 172, s. 33; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of

Transportation" for "State Highway and Public Works Commission."

ARTICLE 3A.*Facilities and Programs for Youthful Offenders.***§ 148-49.1. Purpose of Article.**

Applied in State v. O'Neal, 17 N.C. App. 644, 195 S.E.2d 137 (1973).

§ 148-49.2. Definitions.

Applied in State v. Simpson, 14 N.C. App. 456, 188 S.E.2d 535 (1972).

§ 148-49.7. Treatment of youthful offenders.**Editor's Note.—**

Session Laws 1973, c. 476, s. 133, effective July 1, 1973, amends this section by substituting "Department of Human Re-

sources" for "State Department of Mental Health" and for "Department of Mental Health."

ARTICLE 4.*Paroles.***§ 148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes.**

Cited in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-52. Appointment of Board of Paroles; members; duties; quorum; salary. —(a) There is hereby created a Board of Paroles with authority

to grant paroles (including both regular and temporary paroles), to persons held by virtue of any final order or judgment of any court of this State in any prison, jail, or other penal institution of this State or its political subdivisions. The Board shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before June 30, 1955) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency.

(b) The Board of Paroles shall consist of three members, all of whom shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Board. The Governor shall designate one of the persons so appointed to serve as chairman of the Board of Paroles. The three members of the first Board shall be appointed for terms of office beginning July 1, 1955, as follows: one member to serve for two years, one member to serve for three years, and one member to serve for four years. Any appointment to fill a vacancy shall be for the balance of the term only, but in the event that any member of the Board is temporarily incapable of performing his duties, the Governor may appoint some suitable person to act in his stead during the period of incapacity. At the end of the respective terms of office of the members of the first Board, their successors shall be appointed for terms of four years and until their successors are appointed and qualified. The Governor shall have power to remove any member of the Board only for total disability, inefficiency, neglect of duty or malfeasance in office.

(c) A majority of the Board shall constitute a quorum for the transaction of business.

(d) The salary of the members of the Board shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. (1935, c. 414, s. 2; 1939, c. 335; 1953, c. 17, s. 3; 1955, c. 867, s. 1; 1973, c. 461.)

Editor's Note.—

The 1973 amendment repealed subsection (e), relating to the power and authority of the State Board of Correction and

Training over paroles for inmates of institutions under the management and control of that Board.

§ 148-57. Rules and regulations for parole consideration.

Nature of Honor Grade Status, Work Release Privilege and Parole. — Honor grade status, work release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full con-

stitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

§ 148-58. Time of eligibility of prisoners to have cases considered.

North Carolina Board of Paroles Has Authority to Parole a Prisoner Serving a Sentence of Life Imprisonment. — See opin-

ion of Attorney General to Mr. J. Mac Boxley, Chairman, N.C. Board of Paroles, 43 N.C.A.G. 4 (1973).

§ 148-59. Duties of clerks of superior courts as to commitments; statements filed with Board of Paroles. — The several clerks of the superior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Board of Paroles shall by regulations prescribe, which information shall contain, among other things, the following:

- (1) The court in which the prisoner was tried;
- (2) The name of the prisoner and of all codefendants;
- (3) The date or session when the prisoner was tried;
- (4) The offense with which the prisoner was charged and the offense for which convicted;
- (5) The judgment of the court and the date of the beginning of the sentence;

- (6) The name and address of the presiding judge;
- (7) The name and address of the prosecuting solicitor;
- (8) The name and address of private prosecuting attorney, if any;
- (9) The name and address of the arresting officer; and
- (10) All available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Board of Paroles, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 108, s. 90.)

Editor's Note.—

The 1973 amendment deleted "and the clerks of all inferior courts" following "superior courts" in the first paragraph and substituted "session" for "term" in subdivision (3).

File Must Contain Names and Addresses of Sworn Officials.—The file must contain the name and address of the judge, of the

investigating officer, and of the State's prosecutor. These sworn officials know more of the background of the case than the record discloses. Hence, these officers may be consulted on matters in addition to that which the record discloses. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-60. Time for release of prisoners discretionary.

This section merely says that before the Board paroles a prisoner its members should feel that there is "a reasonable probability" that his release will not be "incompatible with the welfare of society."

Jernigan v. State, 279 N.C. 556, 184 S.E.2d 259 (1971).

Release of Prisoner before Completion of Sentence.—Whether to release a prisoner before the completion of his sentence is a question with many facets. It cannot be answered by rules of law. Those who have watched the prisoner during his confinement are better qualified than the courts to say if and when he merits parole. Court proceeding would be a poor substitute for the method now employed. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

Granting Honor Grade Status, etc., Is Mitigation of Terms of Judgment.—The granting of honor grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial

and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

Which Is Not Undeniable Right of Prisoner.—While a prisoner takes with him into the prison certain rights which may not be denied him, the legal right to the mitigation of his punishment is not one of them. It is contemplated as a part of his rehabilitation that he earn his right to honor grade status, work release, or parole. The decision is not in the nature of an adversary proceeding under rules of evidence. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Involves Policy Decisions to Be Decided by Department of Correction and Board of Paroles.—Whether a prisoner is entitled to honor grade status, work release, or parole involves policy decisions which should be decided by the Department of Correction and the Board of Paroles. These agencies are charged with the duty and are properly given means of discharging it not available to the courts. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-61.1. Revocation of parole by Board; conditional or temporary revocation.

Applied in *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

§ 148-62. Discretionary revocation of parole upon conviction of crime.

This section does not violate the Constitution of North Carolina. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

This section is not a criminal law in the sense that it defines or prohibits a specific crime and imposes a penalty for its commission. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Administration of Sentences after Prisoner's Parole Is Revoked. — This section relates to the administration by the Board of Paroles of a prisoner's several criminal sentences after his parole has been revoked upon conviction of a new crime. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Legislature May Establish Parole System. — In the division of governmental authority the "legislature has exclusive power to determine the penalogical system of the State. It alone can prescribe the punishment for crime. It may therefore establish a parole system." *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

And Administration of Parole System May Be Delegated. — The granting of parole and the supervision of parolees are purely administrative functions, and accordingly may be intrusted by the legislature to nonjudicial agencies. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Petitioner's contention, that the legislature has provided no standards to guide the Board of Paroles in determining whether a parole violator shall serve his original sentence concurrently with his new sentence or at the completion of it and that this failure nullifies the purported grant of authority under this section, cannot be sus-

tained. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Legislature Has Delegated Option of Prescribing Order of Multiple Sentences to Board of Paroles. — The legislature may prescribe the order in which multiple sentences are to be served, and it has given the Board of Paroles the option of so doing when it revokes a parole under this section. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Primary Consideration of Sentence Should Be Welfare of Society. — In determining whether the sentence of a parole violator shall run concurrently or consecutively it is implicit in this section that the Board's primary consideration shall be the "welfare of Society." *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Challenge of Order of Board of Paroles. — The Declaratory Judgment Act is an appropriate means whereby a prisoner who is currently serving a valid sentence for a crime committed during his parole may challenge an order of the Board of Paroles under this section providing that the remainder of the sentence upon which the parole was revoked shall be served at the completion of the sentence for the crime committed during the parole. *Jernigan v. State*, 279 N.C. 556, 184 S.E.2d 259 (1971).

Board of Paroles Not Authorized to Require Youthful Offender Conditionally Released to Serve the Remainder of His Sentence when He Commits a New Offense. — See opinion of Attorney General to Mr. George W. Randall, Department of Social Rehabilitation and Control, 41 N.C.A.G. 868 (1972).

§ 148-64. Cooperation of prison and parole officials and employees.

Quoted in *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section.

Access to Prison Records. — Prison records are confidential and only named parties have access to them. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

or Inmate Involved. — Prison records are confidential and are not subject to inspection by the public or by the inmate involved. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Does Not Include Inspection by Public

§ 148-76. Duties of Records Section.

Access to Prison Records. — Prison records are confidential and only named parties have access to them. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

or Inmate Involved. — Prison records are confidential and are not subject to inspection by the public or by the inmate involved. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1972).

Does Not Include Inspection by Public

Chapter 150.

Uniform Revocation of Licenses.

Sec.

150-30. Appeal; no bond required of board.

§ 150-9. Definition of "board."

Editor's Note.—

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

Cited in *In re Hawkins*, 17 N.C. App. 378, 194 S.E.2d 540 (1973).

§ 150-10. Opportunity for licensee or applicant to have hearing.

Editor's Note.—For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

§ 150-15. Rights of person entitled to hearing.

Editor's Note. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

§ 150-18. Rules of evidence.

Editor's Note. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

§ 150-20. Manner and time of rendering decision.

Cited in *In re Hawkins*, 17 N.C. App. 378, 194 S.E.2d 540 (1973).

§ 150-27. Scope of review; power of court in disposing of the case.

Editor's Note.—

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

In accord with 1st paragraph in original.
See *In re Hawkins*, 17 N.C. App. 378, 194 S.E.2d 540 (1973).

Findings of Fact Supported by Competent Evidence, etc.—

§ 150-30. Appeal; no bond required of board.—Any party to the review proceeding, including the board, may appeal to the appellate division from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the board. The appealing party may apply to the superior court for a stay of that court's decision or a stay of the board's decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1953, c. 1093; 1973, c. 108, s. 91.)

Editor's Note. — The 1973 amendment substituted "appellate division" for "Supreme Court" in the first and third sentences.

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification. — Catawba: 1973, c. 354 (Chapter 152 inapplicable); Surry: 1973, c. 37.

§ 152-7. Duties of coroners with respect to inquests and preliminary hearings. — The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

- (2) To empanel a jury of six persons, under oath, to make further inquiry as to the circumstances of death and to call witnesses as necessary to determine the circumstances. The coroner shall order that the names of at least 15 persons be drawn from the jury box in accordance with the procedure in G.S. 9-5. The coroner shall examine the jurors appearing in obedience to the summons, and may excuse jurors for whom service would be an extreme hardship, who would be unable to remain impartial in determining the issues, or are otherwise disqualified to serve as jurors. If the remaining jurors are less than six in number, the coroner shall cause sufficient additional names to be drawn from the jury box and have them summoned, so as to obtain the immediate attendance of at least six qualified jurors. The first six qualified jurors constitute the inquest jury.
- (4) Whenever in such investigations, whether preliminary or before his jury, it shall appear to the coroner or to the jury that any person or persons are culpable in the matter of such death, he shall forthwith issue his warrant for such persons and cause the same to be brought before him and the inquiry shall proceed as in the case of preliminary hearings in the district court, and in case it appears to the said coroner and the jury that such persons are probably guilty of any crime in connection with the death of the deceased, then the said coroner shall commit such persons to jail, if it appears that such persons are probably guilty of a capital crime, and in case it appears that such persons are not probably guilty of a capital crime, but are probably guilty of a lesser crime, then such coroner is to have the power and authority to fix bail for such person or persons. All such persons as are found probably guilty in such hearing shall be delivered to the keeper of the common jail for such county by the sheriff or such other officer as may perform his duties at such hearings and committed to jail unless such persons have been allowed and given the bail fixed by such coroner.

(1973, c. 108, s. 92; c. 558.)

Editor's Note. —

The first 1973 amendment substituted "in the district court" for "before justices of the peace" near the middle of the first sentence of subdivision (4).

The second 1973 amendment, effective Sept. 1, 1973, rewrote subdivision (2).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (2) and (4) are set out.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus. — All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing, and such cases shall be immediately sent to the clerk of the superior court of such county and docketed by him in the same

manner as warrants from magistrates. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the superior or district court review the action of the coroner in fixing bail or declining the same. (Ex. Sess. 1924, c. 65; 1973, c. 108, s. 93.)

Editor's Note. — The 1973 amendment deleted "before a justice of the peace or a recorder" following "preliminary hearing" and substituted "magistrates" for "justices" of the peace" in the first sentence and inserted "or district" following "superior" in the second sentence.

Chapter 153.

Counties and County Commissioners.

Article 8.

County Revenue.

Sec.

153-65. Property taxes; authorized purposes; rate limitation.

Article 9.

County Finance Act.

153-69 to 153-113. [Repealed.]

Article 10.

County Fiscal Control.

153-114 to 153-121. [Repealed.]

153-123. [Repealed.]

153-125 to 153-128. [Repealed.]

153-130 to 153-142. [Repealed.]

Article 10A.

Capital Reserve Funds.

153-142.1 to 153-142.6. [Repealed.]

153-142.7 to 153-142.9. [Repealed.]

Article 10B.

Capital Public Health and Mental Health Center Reserve Funds.

153-142.22 to 153-142.26. [Repealed.]

Article 15.

County Prisoners.

153-181. [Repealed.]

153-185, 153-186. [Repealed.]

153-194. Convicts who may be sentenced to imprisonment at hard labor on the public roads.

Article 22.

Garbage and Solid Waste Collection and Disposal.

153-272. Definitions.

153-273. Control of private collectors.

153-274. County collection and disposal; tax levy.

Sec.

153-275. Powers of local boards of health unaffected.

153-275.1. Powers granted herein supplementary.

153-275.2. Board of Transportation authorized to cooperate with counties in establishing and operating garbage disposal facilities.

Article 25.

Metropolitan Sewerage Districts.

153-297. Procedure for creation; resolutions and petitions for creation; notice to and action by the Board of Water and Air Resources; notice and public hearing; resolutions creating districts; actions to set aside proceedings.

153-299. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings.

153-311, 153-312. [Repealed.]

153-318. Rights-of-way and easements in streets and highways.

Article 29.

County Service Districts.

153-383. Title; effective date.

153-384. Purposes for which districts may be established.

153-385. Definition of service districts.

153-386. Extension of service districts.

153-387. Consolidation of service districts.

153-388. Required provision or maintenance of services.

153-389. Abolition of service districts.

153-390. Taxes authorized; rate limitation.

153-391. Bonds authorized.

Chapter Repealed Effective Feb. 1, 1974.
—This Chapter is repealed in its entirety by Session Laws 1973, c. 822, effective Feb. 1, 1974, which enacts a new Chapter 153A,

Counties. Chapter 153A is not included in this Interim Supplement, but will be found in Pamphlet No. 8 of the 1973 Advance Legislative Service.

ARTICLE 2.

*County Commissioners.***§ 153-5. Local modifications as to term and number.****Editor's Note.—**

The 1971 amendment was made subject to referendum and was approved by the voters of Warren County at the election held Nov. 7, 1972.

§ 153-6. Vacancies.—Vacancies occurring in the board of commissioners of any county shall be filled by appointment by the remaining members of the board. If the county is divided into districts for election of the board, the person appointed to fill a vacancy shall be a resident of the same district as the member causing the vacancy. If the member causing the vacancy was elected as the nominee of a political party, the person appointed to fill the vacancy shall be a member of that political party. The board shall consult the county executive committee of the appropriate political party before filling a vacancy, but shall not be bound by its recommendations.

If the remaining members of the board, because of a tie vote or for any other reason, are unable to fill the vacancy within 60 days of its occurrence, such vacancy shall be reported immediately by the clerk of the board to the clerk of the superior court of such county, who shall within 10 days thereafter, fill such vacancy. The clerk of superior court shall consult the county executive committee of the appropriate political party before filling the vacancy, but he shall not be bound by the committee's recommendations. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C. S., s. 1294; 1959, c. 1325; 1965, cc. 239, 382; 1967, cc. 7, 424, 439, 1022; 1969, cc. 82, 222; 1971, c. 743, s. 1; 1973, c. 54.)

Editor's Note.—

The 1973 amendment substituted the present second and third sentences of the first paragraph for the former second sentence, which read: "The person ap-

pointed to fill a vacancy shall be a member of the same political party, and, if the county is divided into districts for election of the board, a resident of the same district, as the member causing the vacancy."

§ 153-9. Powers of board.—The boards of commissioners of the several counties have power:

Local Modification. — Brunswick, Carteret, Currituck, Dare, Hyde, New Han- over, Onslow and Pender: 1973, c. 538, ss. 1, 2.

Highways and Bridges

(17) **Roads and Bridges.**—To supervise the maintenance of neighborhood public roads or roads not under the supervision and control of the Board of Transportation and bridges thereon: Provided, however, county funds may not be expended for such maintenance except to the extent such expenditures are otherwise authorized by law; to exercise such authority with regard to ferries and toll bridges on public roads not under the supervision of the Board of Transportation as is granted in G.S. 136-88 of the Chapter on Roads and Highways or by other statutes; to provide draws on all bridges not on roads under supervision of the Board of Transportation where the same may be necessary for the convenient passage of vessels; to allow and contract for the building of toll bridges on all roads not under the supervision of the Board of Transportation and to take bond from the builders thereof. It is the intent of this subdivision that the powers and authorities herein granted shall be exercised in accordance with the provisions of the Chapter on Roads and Highways.

The boards of commissioners of the several counties likewise have power to close any street or road or portion thereof (except those lying within the limits of municipalities) that is now or may hereafter be

opened or dedicated, either by recording of a subdivision plat or otherwise. Any individuals owning property adjoining said street or road who do not join in the request for the closing of said street or road shall be notified by registered letter of the time and place of the meeting of the commissioners at which the closing of said street or road is to be acted upon. Notice of said meeting shall likewise be published once a week for four weeks in some newspaper published in the county, or if no newspaper is so published, by posting a notice for 30 days at the courthouse door and three other public places in the county. No further notice shall be necessary. If it appears to the satisfaction of the commissioners that the closing of said road is not contrary to the public interest and that no individual owning property in the vicinity of said street or road or in the subdivision in which is located said street or road will thereby be deprived of reasonable means of ingress and egress to his property, the board of commissioners may order the closing of said street or road; provided, that any person aggrieved may appeal within 30 days from the order of the commissioners to the superior court of the county, where the same shall be heard de novo. Upon such an appeal, the superior court shall have full jurisdiction to try said matter upon the issues arising and to order said street or road closed upon proper findings of fact by the jury. A certified copy of said order of the commissioners (or of the judgment of the superior court in the event of an appeal) shall be filed in the office of the register of deeds of said county. Upon the closing of a street or road in accordance with the provisions hereof, all right, title and interest in such portion of such street or road shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to such portion of such street or road, and the title of each of such persons, firms or corporations shall, for the width of the abutting land owned by such persons, firms or corporations, extend to the center of such street or road. Provided, that the provisions of this paragraph shall not apply to any roads and highways under the control and supervision of the Board of Transportation.

The board of county commissioners of the several counties shall also have the power and authority to close and remove from dedication all easements except these [those] lying within the limits of municipalities, that are now or may hereafter be dedicated, whether by recording of a subdivision plat or otherwise. The closing and removal of said easements shall be in the same manner as herein provided for the closing of streets and roads provided that the provisions of this paragraph shall not apply to any easements for roads and highways that are a part of the State Highway System.

The board of aldermen or other governing body of any municipality shall have the same power and authority with respect to any street or road or portion thereof which is inside the corporate limits of such municipality as given to the county commissioners by this subdivision with respect to any street or road or portion thereof outside the corporate limits of a municipality. Provided, that the provisions of this paragraph shall not apply to any streets or highways under the control and supervision of the Board of Transportation.

Copies of the registered letters giving the notice required by the second paragraph of this subdivision, and the return receipts or other good and sufficient evidence of giving the required notice, shall be recorded in the register of deeds office, together with the resolution of such county or municipal governing body (or with the judgment of the superior court, in cases where an appeal was taken). It shall not

be necessary for the clerk of court to probate the records required to be recorded herein.

Whenever the word "street" or the word "streets" appears in this subdivision, the word "street" shall also mean and include an alley or lane and the word "streets" shall mean and include alleys or lanes. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 555, ss. 1, 2.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

The second 1973 amendment, in the fourth paragraph, substituted "any street or road or portion thereof which is" for "roads, streets or other public ways which are," deleted "the second paragraph of" preceding "this subdivision" and substituted "any street or road or portion thereof" the second time the phrase appears for "roads, streets or public ways." The amendment also added the last paragraph.

Legislative Intent As to Closing Streets by Municipalities.—The true legislative intent is that if a municipality wishes to close a street, or a part thereof, the notices required must be given. Such an intent is fair and just, because it affords all inter-

ested parties an opportunity to be heard. *In re City of Washington*, 15 N.C. App. 505, 190 S.E.2d 309 (1972).

Notice to Owners of Property Adjoining Street to Be Closed Not Limited to Those with Special Interest.—This section requires notice by registered mail to the owners of property adjoining the street to be closed who did not join in the request for closing the street. The works of the statute are clear and unequivocal. There is nothing to indicate that only those with a "special interest" must be notified by registered mail. *In re City of Washington*, 15 N.C. App. 505, 190 S.E.2d 309 (1972).

Owners of Property on Street to Be Partially Closed.—Owners of property on a street which is to be partially closed have an interest in the hearing on the request to close the street. *In re City of Washington*, 15 N.C. App. 505, 190 S.E.2d 309 (1972).

Miscellaneous

(35½) Repealed by Session Laws 1969, c. 1003, s. 1, effective July 1, 1969.

Editor's Note.—The repealed subdivision was erroneously designated (34½) in the 1971 Supplement.

(38) Homes for Indigent and Delinquent Children.—

Editor's Note.—

Session Laws 1973, c. 476, s. 138, effective July 1, 1973, amends this subdivision

by substituting "Social Services Commission" for "State Board of Public Welfare."

(44) Obtaining Liability Insurance and Waiver of Immunity from Liability for Damages.—

Jurisdiction Not Limited to State Courts.—The statutory language, "in any court of competent jurisdiction in such county," does not attempt to limit jurisdiction to a state court in such county, nor to a court of such county; the United States District Court is a court of competent jurisdiction in the county. *Knighton v. Johnston County*, 330 F. Supp. 652 (E.D.N.C. 1971).

The United States District Court is a court of competent jurisdiction in a county

within the meaning of this subdivision. Even if the legislative intent was to deprive the federal court of jurisdiction, it cannot do so. Federal jurisdiction cannot be defeated by a state statute prescribing the court in which the action is to be brought. *Knighton v. Johnston County*, 330 F. Supp. 652 (E.D.N.C. 1971).

Stated in *Steelman v. City of New Bern*, 279 N.C. 589, 184 S.E.2d 239 (1971).

(45) Designating the Names of Roads or Streets in Unincorporated Areas.—

The board of county commissioners of any county is hereby authorized, in its discretion, to designate, change, alter or add to the name of any street, road, highway, or other thoroughfare open to the public outside of the corporate limits of any incorporated city or town, and to assign street numbers to be used on said roads or streets. This power may be

exercised on the same street, road, highway, or other thoroughfare open to the public as often as the board deems it expedient.

Before exercising any power granted herein, the board shall make such effort as it deems expedient to make certain that a new name assigned to a street, road, highway, or other thoroughfare open to the public will not duplicate or be confused with the name of any existing street, road, highway, or other thoroughfare open to the public in the vicinity or within the corporate limits of any nearby city or town.

Nothing herein shall be construed to allow the board to change the number assigned to any street, road, highway, or other thoroughfare by the Board of Transportation; but the board may give such street, road, highway, or other thoroughfare a name in addition to its number.

After the board of county commissioners has designated, changed, altered, or added to the name of any street, road, highway, or other thoroughfare open to the public, and assigned street numbers, if any, it shall notify the local postmaster, the Board of Transportation, and any nearby city or town of its action. Provided, that this subdivision shall not affect the provisions of Chapter 945 of the Session Laws of 1953. (1957, c. 1068; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

(47a) County Electrical Inspectors.—

Local Modification.—Avery: 1973, c. 84;
Guilford: 1973, c. 247; Mecklenburg: 1973,
c. 247.

(55) To Adopt Ordinances for the Better Government of the County.—To adopt ordinances to prevent and abate nuisances, whether on public or private property; ordinances supervising, regulating, or suppressing or prohibiting in the interest of public morals, comfort, safety, convenience and welfare, public recreations, amusements and entertainments, and all things detrimental to the public good; and ordinances in exercise of the general police power not inconsistent with the Constitution and laws of the State or the Constitution and laws of the United States. Nothing herein shall affect the authority of local boards of health to adopt rules and regulations for the protection and promotion of public health. Nothing herein shall confer upon any county any power or authority (not now possessed by such county) relating to the regulation or control of vehicular or pedestrian traffic on streets and highways under the control of the Board of Transportation, nor to the regulation or control of highway rights-of-way in any manner inconsistent with State law or ordinances of the Board of Transportation, nor to the regulation of the rights-of-way or rights-of-passage of public utilities, electric membership corporations or public agencies of the State. Ordinances adopted pursuant to this subdivision shall apply throughout the county, except that such ordinances shall not be applicable within the corporate limits or jurisdiction of any municipality which has conducted the most recent election required by its charter or the general law, whichever is applicable, unless the governing body thereof shall, by resolution, agree to such ordinance.

No ordinance adopted pursuant to authority granted by this section may be finally passed at the meeting at which it is introduced unless it receives the unanimous approval of all the members of the board (not including the chairman if he does not participate in the vote). An ordinance which is approved by less than an unanimous vote shall be voted upon again at the next regular meeting of the board, and shall be adopted if it then receives a majority of the votes cast. This

paragraph does not apply to ordinances adopted under authority of other portions of the General Statutes or of local acts.

The board of commissioners shall cause the clerk to the board to keep an ordinance book which shall be separate from the commissioners' minute book and in which shall be recorded all county ordinances. No ordinance, whether adopted pursuant to this subdivision or another law, shall be effective until it is recorded and indexed in the ordinance book. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

Legislative Authority of County Board of Commissioners.—A county board of commissioners has no legislative authority not granted to it expressly or by necessary implication from expressly granted powers. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

Similar to Statutes, etc.—

In accord with 1971 Cum. Supp. See *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

The authority conferred by this section upon the boards of commissioners of the respective counties is the same as that conferred upon cities and towns by §§ 160A-174 and 160A-181. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

Ordinance May Not Prohibit Conduct Dealt With by Statute.—The board of commissioners of the county cannot enact a valid ordinance forbidding certain conduct if a statewide statute in effect at the time the ordinance in question is adopted deals specifically with the identical conduct. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

And Repeal of Statute Does Not Breathe Life into Ordinance.—The repeal of a statewide law which, during its life, prohibited the enactment of a county ordinance is prospective and does not breathe life into an ordinance which was beyond the authority of the ordaining body when it was adopted. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

(58) Provision for Ambulance Services.—

Editor's Note.—

Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this subdivision by substituting "Department of Human Resources" for "State Board of Health."

(66) To enact an ordinance prohibiting or regulating fishing from any bridge for the purpose of protecting persons fishing on the bridge from passing vehicular or rail traffic. Such ordinance may also prohibit or regulate fishing from any bridge within the territorial jurisdiction of any

Authority for County Ordinance Concerning Drive-In Theaters.—This section provides plenary authority for a county ordinance making it unlawful to operate a drive-in motion picture theater near streets or highways in such a manner that the screen is visible to passing motorists. *Variety Theaters, Inc. v. Cleveland County*, 282 N.C. 272, 192 S.E.2d 290 (1972).

As to constitutionality of county ordinance concerning drive-in theaters, see *Variety Theaters, Inc. v. Cleveland County*, 282 N.C. 272, 192 S.E.2d 290 (1972).

City May Proscribe Obscenity Not Forbidden by State Law.—Nothing in §§ 14-190.1 to 14-190.9, statewide laws relating to obscene literature and exhibitions and to indecent exposure, expresses or indicates an intent by the General Assembly to preclude cities and towns under §§ 160A-174 and 160A-181, or counties under this subdivision from enacting and enforcing ordinances requiring a higher standard of conduct or condition within their respective jurisdictions. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

This subdivision confers authority to enact Sunday closing ordinances upon the boards of commissioners of the respective counties. *State v. Atlas*, 283 N.C. 165, 195 S.E.2d 496 (1973).

As to constitutionality of Sunday closing ordinance enacted by authority of this subdivision, see *State v. Atlas*, 283 N.C. 165, 195 S.E.2d 496 (1973).

A County May, in Certain Cases, Provide Free Ambulance Service.—See opinion of Attorney General to Mr. Joe O. Brewer, 43 N.C.A.G. 157 (1973).

municipality whose governing body by resolution agrees to such prohibition or regulation; provided, however, that any such municipal governing body may upon 30 days' written notice withdraw its approval of the county ordinance, and that ordinance shall have no further effect within the municipality's jurisdiction. The ordinance shall provide that signs shall be posted on any bridge where fishing is prohibited or regulated reflecting such prohibition or regulation. In any event, no one may fish from the drawspan of any regularly attended bridge.

The authority granted under the provisions of this subdivision shall be subject to the authority of the Board of Transportation to prohibit fishing on any bridge on the State Highway System. (1971, c. 690, ss. 1, 6; 1973, c. 507, s. 5.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

(67) Authority of Boards of Commissioners in Certain Counties over Commissions, Boards, Agencies, etc.—In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners is hereby authorized to assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This subdivision shall apply to the board of health, the social services board, board of mental health (area) and any other commission, board or agency appointed by the board of county commissioners and/or acting under and pursuant to authority of the board of county commissioners of said county. It is provided, however, that the board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners is further authorized and empowered, in the exercise of its discretion, to appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

This subdivision applies to counties with a population in excess of 325,000. (1973, c. 454, ss. 1-2½.)

Editor's Note. — The 1973 amendment added this subdivision.

Only Part of Section Set Out. — Only

the opening paragraph of the section and the subdivisions added or changed by the amendments are set out.

§ 153-10.1. Local: Removal and disposal of trash, garbage, etc.

History of Section. — See Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

Grant of Powers by Section Supplementary to Grant by § 153-272. — The grant of powers to boards of county commissioners by this section is, by virtue of § 153-275, supplementary to the grant made by § 153-272. Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

And the two statutes must be construed together. Lafayette Transp. Serv., Inc. v.

County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

"Garbage" Distinguished from "Trash," "Debris," etc. — As used in this section, the word "garbage" has a meaning different from the meaning of "trash," "debris," "litter" and "waste matter." Otherwise, the latter terms are meaningless redundancies, which cannot be presumed to have been the legislative intent. Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

§ 153-13. Compensation and allowances of county commissioners.

Authority of the county commissioners to amend the county budget to raise or lower their compensation at any time during the fiscal year is limited by their authority to fix their compensation in the adoption of the annual budget. Opinion of Attorney General to Mr. James C. Fox, 42 N.C.A.G. 132 (1972).

ARTICLE 2A.*Photographic Reproduction of Records.***§ 153-15.4. Disposition of originals.****Editor's Note.—**

Session Laws 1973, c. 476, s. 48, effective July 1, 1973, substitutes "Department of Cultural Resources" for "State Department of Archives and History" throughout the General Statutes.

ARTICLE 7.*Local Confinement Facilities.*

§ 153-50. Definitions.—The following terms or phrases shall be defined as follows in this Article unless the context or subject matter otherwise requires:

- (1) "Secretary" means the Secretary of Human Resources.
- (2) "Department" means the Department of Human Resources.
- (3) "Governing body" includes the governing body of any unit of county or municipal government which operates a jail or confinement facility, or the governing bodies of any units of local governments operating a district confinement facility.
- (4) "Local confinement facility" includes any county or municipal jail, any local lockup, and regional or district jail, any detention facility for children or adults, any county or municipal workhouse or house of correction, and any other confinement facility operated by any local government for confinement of persons awaiting trial or serving sentences.
- (5) "Local government" includes any county or municipality which operates a jail or other confinement facility.
- (6) "Prisoner" includes any person, adult or juvenile, confined or detained.

(1967, c. 581, s. 2; 1969, c. 981, s. 1; 1973, c. 476, s. 138.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Secretary" for "Commissioner" and "Secretary of Human Resources" for "State Commissioner of

Social Services" in subdivision (1) and substituted "Department of Human Resources" for "State Department of Social Services" in subdivision (2).

§ 153-51. Jail and detention services.—The Social Services Commission is hereby given the policy responsibility for providing and coordinating State services to local government with respect to local confinement facilities. An organization for jail and detention services is hereby established within the Department under the direction of the Secretary and shall have the following powers, duties, and responsibilities:

- (1) To provide consultation and technical assistance to local governmental officials concerning local confinement facilities;
- (2) To visit and inspect local confinement facilities; to advise the jailer, sheriff, county commissioners, and other appropriate officials as to deficiencies and recommendations for improvement; and to submit written reports of such inspections to appropriate officials of local government;
- (3) To review and approve plans for the construction or major modification of any local confinement facility;

- (4) To develop minimum standards for the construction and operation of local confinement facilities;
- (5) To assist the Secretary in providing for training of personnel of local confinement facilities;
- (6) To perform such other duties as may be necessary to carry out the responsibilities of the State related to local confinement facilities as provided by law. (1967, c. 581, s. 2; 1973, c. 476, s. 138.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Social Services Commission" for "North Carolina Board of

Public Welfare" in the first sentence and "Secretary" for "Commissioner" in the introductory paragraph and in subdivision (5).

§ 153-52. Minimum standards.—(a) The Secretary of Human Resources shall develop and publish minimum standards for the operation of local confinement facilities. In the development of these minimum standards, the Department shall consult with and seek the advice of the presidents (or their designated representatives) of organizations representing local government and law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives Association. The Department shall also consult with and seek the advice of the executive heads of appropriate State departments (or their designated representatives), including the Prison Department and the Insurance Department. These minimum standards shall be approved by the Social Services Commission and shall be effective only upon approval by the Governor. These minimum standards shall become effective not later than January 1, 1969, and shall have the force and effect of law.

(1969, c. 982; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Secretary of Human Resources" for "Commissioner of Public Welfare" in the first sentence, deleted the "State Board of Health, the Department of Mental Health" follow-

ing "Prison Department" in the third sentence and substituted "Social Services Commission" for "State Board of Public Welfare" in the fourth sentence, all in subsection (a).

§ 153-53.1. Enforcement of minimum standards.—If an inspection under G.S. 153-53 discloses that a local confinement facility does not meet the minimum standards established under G.S. 153-52, and if the Secretary considers that the conditions in such local confinement facility jeopardize the safe custody, safety, health, or welfare of prisoners confined therein:

- (1) He shall so notify the governing body and other officials of the local government unit responsible for the local confinement facility. A copy of this notice, together with a copy of the written report of the inspection required under G.S. 153-53, shall also be sent to the senior regular resident superior court judge for the district in which the local confinement facility is located. The governing body shall call a special public meeting to consider this report, and the inspectional personnel shall appear at this public meeting to advise and consult with the governing body concerning appropriate corrective action.
- (2) The governing body shall initiate appropriate corrective action within 30 days or may voluntarily close the local confinement facility. Such corrective action shall be completed within a reasonable period of time.
- (3) If the governing body fails to initiate corrective action within 30 days after receipt of the report of inspection, or fails to correct the disclosed conditions within a reasonable period of time, the Secretary of Human Resources may order that the local confinement facility be closed. The governing body, the senior regular resident superior court judge, and other responsible local officials shall be notified by regis-

tered mail of the Secretary's order closing a local confinement facility. Such an order shall be effective immediately.

- (4) A governing body shall have the right to appeal to the senior regular resident superior court judge from an order of the Secretary which requires that a local confinement facility be closed. Notice of intention to appeal shall be given by registered mail to the Secretary and to the senior regular resident superior court judge within 15 days after receipt of the Secretary's order. The right of appeal shall be deemed waived if notice is not given as herein provided.
- (5) The appeal hearing shall be before the senior regular resident superior court judge who shall cause proper and sufficient notice of the date, time, and place of the appeal hearing to be given to all interested parties, including the Secretary, the governing body, and other local officials. The hearing shall be conducted by the judge without a jury, consistent with principles of due process of law and fundamental fairness. The Secretary and members of the Department, members of the governing body, and other responsible local officials, shall have a right to be present at the appeal hearing to present evidence which the court deems appropriate. The issue shall be whether the local confinement facility met the required minimum standards on the date of the last inspection. The court may affirm, reverse, or modify the Secretary's order. (1947, c. 915; 1967, c. 581, s. 2; 1969, c. 982; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Secretary" for "Commissioner" and "Secretary

of Human Resources" for "Commissioner of Public Welfare."

§ 153-53.3. Medical care of prisoners.

(b) In case a prisoner dies in any local confinement facility, the medical examiner and coroner shall be notified immediately and a report of the death in writing shall be made to the local or district health director and to the Secretary of Human Resources within five days of the death. This report shall be made by the jailer or other personnel supervising the local confinement facility on the proper form of the Commission for Health Services for reporting a death in a local confinement facility. The Commission for Health Services shall develop and the Department distribute a proper form for reporting a death in a local confinement facility.

(1969, c. 982; 1973, c. 476, ss. 128, 138.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Secretary of Human Resources" for "Commissioner" in the first sentence, "Commission for Health Services" for "State Board of Health" in the second sentence and "Commission for Health Services shall develop

and the Department" for "State Board of Health shall develop and" in the third sentence of subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not set out.

§ 153-53.4. Sanitation and food. — (a) The Commission for Health Services shall adopt rules and regulations governing the sanitation of local confinement facilities, including kitchens, or other places where food is prepared for prisoners. These rules and regulations shall cover such matters as cleanliness of floors, walls, ceilings, storage spaces, utensils and other facilities; adequacy of lighting, ventilation, water, lavatory facilities, bedding, food protection facilities, treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; adequacy of diet; and such other items as are necessary in the interest of the health of the prisoners and the public.

(b) The Commission for Health Services shall also approve a score sheet prepared by the Department to be used by sanitarians of local or district health departments, who shall inspect local confinement facilities as often as required by the

rules and regulations of the Commission for Health Services. Any findings of inspectional personnel of the Department of Human Resources which reflect hazards or deficiencies in the sanitation or food service of a local confinement facility shall be reported immediately to the local or district health department, which shall cause a prompt inspection to be made by a sanitarian. Reports of such inspections shall be forwarded to the Department of Human Resources, and to the governing body, on forms to be developed by the Commission for Health Services. Such reports shall indicate whether the local confinement facility and its kitchen is approved or disapproved for public health purposes. If a local confinement facility or its kitchen is disapproved for public health purposes, the Secretary of Human Resources shall have authority to order that the local confinement facility or the kitchen or both be closed as provided in G.S. 153-53.1(3). (1967, c. 581, s. 2; 1969, c. 982; 1973, c. 476, ss. 128, 138.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Commission for Health Services" for "State Board of Health" in the first sentence of subsection (a) and in the first and third sentences of subsection (b) and substituted "Commission for Health Services shall also approve a score sheet prepared by the Department" for "State Board of Health

shall also prepare a score sheet" in the first sentence of subsection (b), and substituted "Department of Human Resources" for "Department of Public Welfare" and for "State Department of Public Welfare" and "Secretary of Human Resources" for "Commissioner" in subsection (b).

§ 153-53.5. Training of personnel.

Editor's Note. — Session Laws 1973, c. 476, s. 138, effective July 1, 1973, amends this section by substituting "Secretary" for "Commissioner."

No Portion of This Statute Is Repealed

by the 1971 Legislation Creating the Criminal Justice Training Standards Council. —See opinion of Attorney General to Mr. Woodburn C. Williams, N.C. Department of Social Services, 41 N.C.A.G. 603 (1971).

ARTICLE 8.

County Revenue.

§ 153-65. Property taxes; authorized purposes; rate limitation. —

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

- (1) Courts.—To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.
- (2) Debt Service.—To pay the principal of and interest on all general obligation bonds and notes of the county.
- (3) Deficits.—To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.
- (4) Elections.—To provide for all federal, State, district and county elections.
- (5) Jails.—To provide for the operation of a jail and other local confinement facilities.
- (6) Joint Undertakings.—To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

- (7) Schools.—To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.
- (8) Social Services.—To provide for public assistance required by Chapters 108 and 111 of the General Statutes.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) appraised value of property subject to taxation before the application of any assessment ratio. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents (\$1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

- (1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county tax supervisor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
- (2) Agricultural Extension.—To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
- (3) Air Pollution.—To maintain and administer air pollution control programs.
- (4) Airports.—To establish and maintain airports and related aeronautical facilities.
- (5) Ambulance Service.—To provide ambulance services, rescue squads, and other emergency medical services.
- (6) Animal Protection and Control.—To provide animal protection and control programs.
- (7) Beach Erosion and Natural Disasters.—To provide for shoreline protection, beach erosion control, and flood and hurricane protection.
- (8) Cemeteries.—To provide for cemeteries.
- (9) Civil Defense.—To provide for civil defense programs.
- (10) Debts and Judgments.—To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.
- (11) Fire Protection.—To provide fire protection services and fire prevention programs.
- (12) Forest Protection.—To provide forest management and protection programs.
- (13) Health.—To provide for the county's share of maintaining and administering services offered by or through the county or district health department.
- (14) Historic Preservation.—To undertake historic preservation programs and projects.
- (15) Hospitals.—To establish, support and maintain public hospitals and clinics, and other related health programs and facility, or to aid any private, nonprofit hospital, clinic, related facilities, or other health program or facility.
- (16) Human Relations.—To undertake human relations programs.
- (17) Joint Undertakings.—To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
- (18) Law Enforcement.—To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

- (19) Libraries.—To establish and maintain public libraries.
- (20) Mapping.—To provide for mapping the lands of the county.
- (21) Medical Examiner.—To provide for the county medical examiner or coroner.
- (22) Mental Health.—To provide for the county's share of the cost of maintaining and administering services offered by or through the county or area mental health department.
- (23) Open Space.—To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.
- (24) Parking.—To provide off-street lots and garages for the parking and storage of motor vehicles.
- (25) Parks and Recreation.—To establish, support and maintain public parks and programs of supervised recreation.
- (26) Planning.—To provide for a program of planning and regulation of development in accordance with Article 17 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
- (27) Ports and Harbors.—To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.
- (28) Register of Deeds.—To provide for the operation of the office of the register of deeds of the county.
- (29) Sewage.—To provide sewage collection and treatment services.
- (30) Social Services.—To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108 and 111 of the General Statutes, and by establishing and maintaining a county home.
- (31) Solid Waste.—To provide solid waste collection and disposal services, and to acquire and operate landfills.
- (32) Surveyor.—To provide for a county surveyor.
- (33) Veterans' Service Officer.—To provide for the county's share of the cost of services offered by or through the county veterans' service officer.
- (34) Water.—To provide water supply and distribution systems.
- (35) Watershed Improvement.—To undertake watershed improvement projects.
- (36) Water Resources.—To participate in federal water resources development projects.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

- (1) Shall County be authorized to levy annually a property tax at an effective rate not in excess of cents on the one

hundred dollars (\$100.00) value of property subject to taxation for the purpose of?

- (2) Shall County be authorized to levy annually a property tax at a rate not in excess of that which will produce \$..... for the purpose of?
- (3) Shall County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (d) [subsection (c)] at any appropriate level and are not subject to the former voted rate limitation.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the effective property tax rate limitation applicable to County be increased from on the one hundred dollars (\$100.00) value of property subject to taxation to on the one hundred dollars (\$100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1.)

Editor's Note. — As directed by Session 1974, the above section has also been codified as § 153A-149.

Session Laws 1973, c. 803, s. 48, makes the act effective July 1, 1973.

It appears that the reference to "Article 17 of this Chapter" in subdivision (c)(26)

of this section should be to Articles 20, 20A and 20B.

ARTICLE 9.

County Finance Act.

§§ 153-69 to 153-113: Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

ARTICLE 10.

County Fiscal Control.

§§ 153-114 to 153-121: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

§ 153-123: Repealed by Session Laws 1971, c. 780, s. 2, effective July 1, 1973.

§§ 153-125 to 153-128: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

§§ 153-130 to 153-142: Repealed by Session Laws 1971, c. 780, s. 3, effective July 1, 1973.

ARTICLE 10A.

Capital Reserve Funds.

§§ 153-142.1 to 153-142.6: Repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

§§ 153-142.7 to 153-142.9: Repealed by Session Laws 1971, c. 780, s. 4, effective July 1, 1973.

ARTICLE 10B.

Capital Public Health and Mental Health Center Reserve Funds.

§§ 153-142.22 to 153-142.26: Repealed by Session Laws 1971, c. 780, s. 5, effective July 1, 1973.

ARTICLE 13.

County Poor.

§ 153-154. Records for county, how to be kept.

Editor's Note.—

Session Laws 1973, c. 476, s. 138, effective July 1, 1973, amends this section by

substituting "Department of Human Resources" for "State Board of Public Welfare."

ARTICLE 14.

District Hospital-Home.

§ 153-166. Organization meeting; site and buildings.—This board of trustees shall, as soon as possible after appointment, assemble and organize by the election of a chairman, a secretary and a treasurer, which last officer shall be bonded. They shall proceed promptly with the purchase of a site for such hospital-home, including, if they deem it desirable, a farm of suitable size, location and

fertility, giving due consideration to sanitary surroundings and transportation facilities, and shall then cause to be erected suitable plain, substantial, comfortable and permanent buildings for the accommodation of those for whom this Article is intended, giving due regard to the separation of the sexes and races, and such other plans for segregation as their judgment and existing conditions may suggest. Said buildings are to be furnished with plain, substantial furniture, and such other equipment as conditions demand. Necessary hospital facilities may be included, but provisions for such facilities and equipment shall have the approval of the Social Services Commission and the Commission for Health Services. (1931, c. 129, s. 5; 1961, c. 139, s. 1; 1973, c. 476, ss. 128, 138.)

Editor's Note.—

The 1973 amendment, effective July 1, 1973, substituted "Social Services Commission" and the "Commission for Health

Services" for "State Board of Public Welfare and the State Board of Health" at the end of the section.

§ 153-168. Plans and specifications for hospital-home.**Editor's Note.—**

Session Laws 1973, c. 476, s. 138, effective July 1, 1973, amends this section by

substituting "Department of Human Resources" for "State Board of Public Welfare."

§ 153-175. Annual report on affairs of institution.**Editor's Note.—**

Session Laws 1973, c. 476, s. 138, effective July 1, 1973, amends this section by

substituting "Department of Human Resources" for "State Board of Public Welfare."

ARTICLE 15.***County Prisoners.*****§ 153-181:** Repealed by Session Laws 1973, c. 57, s. 5.**§§ 153-185, 153-186:** Repealed by Session Laws 1973, c. 57, s. 5.

§ 153-188. Where no jail, sheriff may imprison in jail of adjoining county.—The sheriffs and other ministerial officers of any county in which there is no jail have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this Article, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county. (1835, c. 2, s. 3; R. C., c. 87, s. 4; Code, s. 3459; Rev., s. 1349; C. S., s. 1353; 1973, c. 57, s. 1.)

Editor's Note. — The 1973 amendment deleted "constables" following "sheriffs" near the beginning of the section.

§ 153-189. Where no jail, courts may commit to jail of adjoining county.—Whenever there happens to be no jail, or when there is an unfit or insecure jail, in any county, the judicial officers of such county may commit all persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs and other officers of such county in which there is no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. Any officer failing to obey such order shall be guilty of a misdemeanor. (1835, c. 2, s. 2; R. C., c. 87, s. 3; Code, s. 3458; Rev., s. 1350; C. S., s. 1354; 1973, c. 57, s. 2.)

Local Modification. — Elizabeth City: 1973, c. 487.

Editor's Note. — The 1973 amendment deleted "superior court judges, justices of

the peace, and all" preceding "judicial officers" and "constables" preceding "and other officers of such county" in the first sentence.

§ 153-190. When jail destroyed, transfer of prisoners provided for. —When the jail of any county is destroyed by fire or other accident, any judge or magistrate of such county may cause all prisoners then confined therein to be brought before him; and upon the production of the process under which any prisoner was confined shall order his commitment to the jail of any adjacent county; and the sheriff or other officer of the county deputized for that purpose shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners. Any officer failing to obey such order of commitment shall be guilty of a misdemeanor. (1835, c. 2, s. 1; R. C., c. 87, s. 2; Code, s. 3457; Rev., s. 1351; C. S., s. 1355; 1973, c. 57, s. 3.)

Editor's Note. — The 1973 amendment, in the first sentence, substituted "judge or magistrate" for "justice of the peace," deleted "constable" preceding "or other

officer," substituted "deputized" for "deputed" and deleted "upon the order aforesaid" at the end of the sentence.

§ 153-194. Convicts who may be sentenced to imprisonment at hard labor on the public roads. —It is lawful for and the duty of the judge holding court to sentence to imprisonment at hard labor on the public roads, in accordance with G.S. 148-28, 148-30 and 148-32 for such terms of 30 days or more as are now prescribed by law for their imprisonment in the county jail or in the State's prison, the following classes of convicts: First, all persons convicted of offenses the punishment whereof would otherwise be wholly, or in part, imprisonment in the common jail; second, all persons convicted of crimes the punishment whereof would otherwise, wholly or in part, be imprisonment in the State's prison. (1887, c. 355; 1889, c. 419; Rev., s. 1355; C. S., s. 1359; 1973, c. 57, s. 4.)

Editor's Note. —

The 1973 amendment eliminated the second paragraph, relating to work

on the public roads by persons sentenced to jail for less than 30 days and by informer solvents.

§ 153-198. Use of county prisoners in maintaining roads not within State system. —The Board of Transportation may, on official request from a board of county commissioners authorize such board of county commissioners to use any county prisoners, upon such terms as may be agreed upon, to maintain and grade any neighborhood road within the county not at such time within the system of the Board of Transportation, but this authorization shall not authorize the levying of any tax for support of local roads; and like authority is extended to the boards of drainage commissioners for public drainage districts for the maintenance and upkeep of such districts. (1937, c. 297, s. 3½; 1957, c. 65, s. 11; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

ARTICLE 20.

Planning and Zoning Areas.

§ 153-251. Authority of county commissioners to create areas.

Editor's Note. —

For note on coastal land use develop-

ment and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).

ARTICLE 20A.

*Subdivisions.***§ 153-266.6. Sale of land by reference to unapproved plat a misdemeanor; injunctions.**

Applied in *State v. Johnson*, 282 N.C. 1, 191 S.E.2d 641 (1972).

ARTICLE 22.

Garbage and Solid Waste Collection and Disposal.

§ 153-272. Definitions.—The following definitions shall apply in the administration, enforcement and interpretation of this Article:

- (1) "Garbage"—all putrescible wastes, including animal and vegetable matter, animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human wastes.
- (2) "Refuse"—all nonputrescible wastes.
- (3) "Solid waste"—garbage, refuse, rubbish, trash, and other discarded solid materials, including solid waste materials resulting from homes, businesses, industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants.
- (4) "Solid waste disposal"—the collection, storage, treatment, utilization, processing, or final disposal of solid waste.
- (5) "Solid waste disposal facility"—land, personnel, equipment or other resources used in the disposal of solid wastes.
- (6) "Solid waste disposal site"—any place at which solid wastes are disposed of by incineration, sanitary landfill or any other methods. (1973, c. 535.)

Revision of Article.—Session Laws 1973, c. 535, revised and rewrote this Article. No attempt has been made to point out the changes made by the revision, but, where appropriate, the historical citations to the old sections have been added to corresponding provisions in the revised Article.

This section is not an unconstitutional delegation of legislative power but comes within the exception permitting the delegation to municipal corporations and to counties of power to legislate concerning local problems. *Porter v. Suburban San. Serv., Inc.*, 283 N.C. 479, 196 S.E.2d 760 (1973).

Difference in Collection, etc., of Wastes by Cities and by Counties.—The problem of the collection and disposal of waste of every sort, kind and description within the congested confines of our municipalities obviously varies considerably from that in our more rural and less congested counties. The legislature has recognized this difference by authorizing municipalities to enact ordinances for the collection and disposal of "solid wastes," while it has au-

thorized counties to regulate only the collection and disposal of "garbage." *Lafayette Transp. Serv., Inc. v. County of Robeson*, 17 N.C. App. 210, 193 S.E.2d 464 (1972).

The most plausible basis for the decisions sustaining the validity of ordinances prohibiting anyone other than the city itself, or its independent contractor, from transporting garbage is that the public health can best be protected if the city authorities have but one scavenger to supervise. *Porter v. Suburban San. Serv., Inc.*, 283 N.C. 479, 196 S.E.2d 760 (1973).

This section relates only to putrescible wastes; consequently, a county has authority to issue exclusive licenses to collect and dispose of putrescible solid wastes constituting "garbage" in specified areas but has no authority to grant an exclusive right to collect and dispose of non-putrescible solid wastes constituting "rubbish" or "trash." *Lafayette Transp. Serv., Inc. v. County of Robeson*, 17 N.C. App. 210, 193 S.E.2d 464 (1972).

It does not authorize the grant of an

exclusive franchise for the operation of a landfill. Porter v. Suburban San. Serv., Inc., 283 N.C. 479, 196 S.E.2d 760 (1973).

Or for Collection and Disposal of Trash.

—This section does not authorize the board of county commissioners to grant an exclusive franchise for the collection and disposal of "trash" not substantially and inseparably commingled with "garbage," as defined in § 130-166.16. Porter v. Suburban San. Serv., Inc., 283 N.C. 479, 196 S.E.2d 760 (1973).

The definition of "garbage" as used in this section is limited to "all putrescible solid wastes, including vegetable matter, animal offal and carcasses of small animals (100 pounds or less), but excluding human body wastes, animal manure, and recognizable industrial by-products," and county commissioners have no authority to grant an exclusive franchise to collect and dispose of wastes not falling within such definition of "garbage." Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

Authority Conferred under Section to Be Construed in Conjunction with Other Statutes. — The legislature intended that the authority conferred under this section be construed in conjunction with other statutes granting authority to boards of county commissioners to deal with the matter of garbage collection and similar matters, including those subsequently enacted. Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1970).

Such as § 153-10.1.—The grant of powers to boards of county commissioners by § 153-10.1 is, by virtue of § 153-275, supplementary to the grant made by this section

and the two statutes must be construed together. Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

And § 160A-192. — By § 160A-192, the legislature authorized municipal corporations to provide by ordinances for the removal of "garbage, slops, and trash." This statute, enacted long before this section, is also part of its context. Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

Section 160A-192 is an indication that, in the contemplation of the legislature, "garbage" and "trash" have never been synonymous. Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

By the use of the word "trash" in connection with the word "garbage" in former § 160-233 (now 160A-192), the legislature intended that municipalities might enact ordinances providing for the collection and removal of both putrescible and non-putrescible wastes. The omission of the word "trash" in the 1961 enactment of this section signifies the legislative intent to authorize counties to regulate the collection and disposal of only putrescible wastes. Lafayette Transp. Serv., Inc. v. County of Robeson, 17 N.C. App. 210, 193 S.E.2d 464 (1972).

Defendants were engaged in the collection and disposal of "garbage" within the meaning of this section where it found that putrescible material constitutes 10% of the waste collected by defendants and that such material is inseparable from other solid waste collected and disposed of by defendants. Porter v. Suburban San. Serv., Inc., 283 N.C. 479, 196 S.E.2d 760 (1973).

§ 153-273. Control of private collectors. — The board of county commissioners of any county is hereby empowered to regulate the collection and disposal of garbage, refuse, and solid waste by private persons, firms or corporations outside the municipalities of the county for the purpose of encouraging and attempting to insure an adequate and continuing service of garbage, refuse and solid waste collection and disposal when the board deems it desirable.

The board may license any person, firm or corporation to engage in such services, and may prohibit the collection and disposal by unlicensed persons, firms or corporations. The board may grant to those licensed under this Article the exclusive right to collect or dispose, or both, garbage, refuse and solid waste for compensation within the entire county or within specified areas of the county and prohibit unauthorized persons, firms or corporations from engaging in the same service within the area where the exclusive right has been granted.

The board shall regulate the fees charged by licensed persons, firms or corporations for the collection and disposal of garbage, refuse, and solid waste to the end that adequate service may be furnished and reasonable compensation may be provided for such services.

The board shall adopt such regulations as it deems necessary to carry out the purpose and intent of this section and to provide adequate services to the citizens

of the county. A violation of such regulations shall be a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days. Each week that such violation continues to exist shall be a separate offense. (1961, c. 514, s. 1; 1973, c. 535.)

The 1971 General Assembly Gave Its Express Approval to the Levy of Taxes for Garbage Collection and Disposal.—See opinion of Attorney General to Mr. Edward H. McCormick, 41 N.C.A.G. 756 (1972).

Counties Are Required to Charge Fees Sufficient to Defray Costs of Garbage Collection.—See opinion of Attorney General to Mr. Bill Summerlin, 43 N.C.A.G. 41 (1973).

§ 153-274. County collection and disposal; tax levy. — The board of county commissioners of any county is hereby empowered to establish and operate garbage, refuse, and solid waste collection and disposal facilities, or either, in areas outside of incorporated cities and towns where, in its opinion, the need for such facilities exists. The board may by ordinance regulate the use of such garbage, refuse, and solid waste disposal facilities; the nature of the solid wastes disposed of therein; and the method of disposal. Ordinances so adopted may be enforced by any law-enforcement officer having jurisdiction, which shall include, but not be limited to, officers of the county sheriff's department, county police department and the State Highway Patrol. The board may contract with any municipality, individual, or privately owned corporation to collect and dispose, or collect or dispose, of garbage, refuse, and solid waste in any such area provided no county shall be authorized by this Article to levy a disposal fee upon any municipality located in that county if the board of commissioners levy a countywide tax on property which provides in part for financing such disposal facilities. In the disposal of garbage, refuse, and solid waste, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, refuse, and solid waste, it may charge fees for such collection service sufficient in its opinion to defray the expense of collection. Counties and municipalities therein are authorized to establish and operate joint collection and disposal facilities, or either of these, upon such terms as the governing bodies may determine. Such agreement shall be in writing and executed by the governing body of the participating units of local government.

The board of commissioners of each county is hereby authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies.

The board of county commissioners may use any vacant land owned by the county, and it may acquire by purchase or condemnation suitable land for the disposal sites, and in the event condemnation of said lands is necessary, the procedure used shall be that set forth in Chapter 40 of the North Carolina General Statutes.

The board may impose fees for the use of the disposal site, and if the county provides for collection services, it shall charge fees sufficient to defray the expense of collection.

The board of commissioners of each county is authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies. The board of commissioners is authorized to make appropriations from these tax funds, and from nonrevenue funds which may be available. Provided that the county board of commissioners may authorize the erection of a gate across a State or county maintained highway leading directly to a sanitary landfill or garbage disposal site which is operated by the county. The gate may be erected at or in close proximity to the boundary of the landfill or garbage disposal site. The cost of the erection of the

gate and its maintenance is to be borne by the county, and the gate shall be closed upon authority of the county commissioners. (1961, c. 514, s. 1; 1971, c. 568; 1973, c. 535.)

§ 153-275. Powers of local boards of health unaffected.—Nothing in this Article shall affect the powers of local boards of health to control the keeping, removal, collection, and disposal of garbage, insofar as the exercise of any such power is necessary to protect and advance the public health. (1961, c. 514, s. 1; 1973, c. 535.)

Legislative Intent That Authority Conferred under § 153-272 Be Construed with Other Statutes.—The legislature intended that the authority conferred upon counties to grant an exclusive franchise to collect and dispose of "garbage" under § 153-272 be construed in conjunction with other

statutes granting authority to boards of county commissioners to deal with the matter of garbage collection and similar matters, including those subsequently enacted. *Lafayette Transp. Serv., Inc. v. County of Robeson*, 283 N.C. 494, 196 S.E.2d 770 (1970).

§ 153-275.1. Powers granted herein supplementary. — The powers granted to counties by this Article shall be deemed supplementary to any powers heretofore or hereafter granted by any other law, either general, special, or local, for the same or a similar purpose, and in any case where the provisions of this Article conflict with or are different from the provisions of such other law, the board of county commissioners may in its discretion proceed in accordance with the provisions of such other law, or, as an alternative method, in accordance with the provisions of this Article. (1961, c. 514, s. 1; 1973, c. 535.)

§ 153-275.2. Board of Transportation authorized to cooperate with counties in establishing and operating garbage disposal facilities.—The Board of Transportation is authorized to cooperate with any county in establishing and operating garbage disposal facilities in areas outside of incorporated cities and towns under the provisions of Article 22 of Chapter 153 of the General Statutes, or otherwise and may make available prison and other labor and the use of equipment for said purpose to any county and the said county shall reimburse the Board of Transportation for the cost to the Board of Transportation of said labor and use and operation of said equipment. Before any work is undertaken under this section, the Board of Transportation and the county for which the work is to be performed shall enter into an agreement specifying the work to be performed and the basis upon which reimbursement will be made to the Board of Transportation. (1967, c. 707; 1973, c. 507, s. 5; c. 535.)

Editor's Note.—The 1973 amendment, of Transportation" for "State Highway effective July 1, 1973, substituted "Board Commission" and for "Commission."

ARTICLE 23.

Regional Planning Commissions.

§ 153-276. Creation of regional planning commissions authorized; procedure; withdrawal of governmental unit.

Editor's Note.—For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).

ARTICLE 24.

Water and Sewerage Facilities.

§ 153-284. Acquisition and operation authorized; contracts and agreements.

Local Modification. — Moore: 1973, c.

ARTICLE 25.

Metropolitan Sewerage Districts.

§ 153-297. Procedure for creation; resolutions and petitions for creation; notice to and action by the Board of Water and Air Resources; notice and public hearing; resolutions creating districts; actions to set aside proceedings.—Any two or more political subdivisions in one or more counties, or any political subdivision or subdivisions and any unincorporated area or areas located within one or more counties, which political subdivisions or areas need not be contiguous, may petition for the creation of a metropolitan sewerage district under the provisions of this Article by filing with the board or boards of commissioners of the county or counties within which the proposed district will lie:

- (1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in said resolution, and
- (2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in such petition for such district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan sewerage district, the board or boards of commissioners, through the chairman thereof, shall notify the North Carolina Board of Water and Air Resources of the receipt of such resolutions and petitions, and shall request that a representative of the Board of Water and Air Resources hold a joint public hearing with the board or boards of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the Board of Water and Air Resources and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the proposed district at which the public hearing shall be held; provided, however, that where a proposed district lies within more than one county, the public hearing shall be held in the county within which the greater portion of the proposed district lies. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at least 30 days prior to the hearing at the courthouse of the county or counties within which the district will lie and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the proposed district, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan sewerage district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board or boards of commissioners with the concurrence of the representative of the Board of Water and Air Resources.

If, after such hearing, the Board of Water and Air Resources and the board or boards of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the creation of a metropolitan sewerage district would preserve and promote the public health and welfare in the area or areas described in such resolutions and petitions, the Board of Water and Air Resources shall adopt a resolution to that effect, defining the boundaries of

such district and declaring the territory within such boundaries to be a metropolitan sewerage district under the name and style of "..... Metropolitan Sewerage District of [County] [Counties]"; provided, that the Board of Water and Air Resources may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon determination by the Board of Water and Air Resources that such deviations are advisable in the interest of the public health, and provided no such district shall include any political subdivision which has not petitioned for inclusion as provided in this Article.

The Board of Water and Air Resources shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board or boards of commissioners and to the governing body of each political subdivision included in the district. The board or boards of commissioners shall cause a copy of such resolution of the Board of Water and Air Resources to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

The foregoing resolution was passed by the North Carolina Board of Water and Air Resources on the day of, 19...., and was first published on the day of, 19....

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan sewerage district therein described must be commenced within 30 days after the first publication of said resolution.

.....
Clerk, Board of Commissioners
for County.

Any action or proceeding in any court to set aside a resolution creating a metropolitan sewerage district, or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan sewerage district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan sewerage district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 3; 1973, c. 512, s. 1.)

Editor's Note. — The 1973 amendment rewrote this section so as to provide for creation of districts encompassing land in more than one county. The amendment also substituted "North Carolina Board of Water and Air Resources" and "Board of

Water and Air Resources" for "State Stream Sanitation Committee" throughout the section and made other changes.

Session Laws 1973, c. 512, s. 6, contains a severability clause.

§ 153-298. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.—(a) Appointment of Board for District Lying Wholly or Partly outside City or Town Limits.—The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed immediately after the creation of the district in the following manner:

- (1) If the district lies entirely within one county, the board of commissioners shall appoint to the district board three members who are qualified voters residing within the district. The members so appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Board of Water and Air Resources creating the district, and the board of commissioners shall

designate the length of the term of each member. Successor members shall be appointed for a term of three years.

- (2) If the district lies in two counties, the board of commissioners of the county in which the largest portion of the district lies shall appoint to the district board two qualified voters residing in the county and district to serve for terms of one year and three years, respectively. The board of commissioners of the county in which the lesser portion of the district lies shall appoint to the district board one qualified voter residing in the county and district to serve for a term of two years. All successor members shall be appointed for a term of three years.
- (3) If the district lies in three or more counties, the board of commissioners of each such county shall appoint one member of the district board. Each member so appointed shall be a qualified voter residing in the district and of the county from which he is appointed and shall serve for a term of three years. Successor members shall be appointed for a term of three years.
- (4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district board. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body. If any city or town within the district shall have a population, as determined from the latest decennial census, greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three members. All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.

(b) Appointment of Board for District Lying Wholly within City or Town Limits.—Any district lying entirely within the corporate limits of two or more cities or towns shall be governed by a district board consisting solely of members appointed by the governing bodies of such cities or towns and, in addition, one member elected by the appointed members of the district board. The governing body of each constituent city or town of the district shall appoint to the district board two qualified voters residing in the district and the city or town. The members so appointed shall elect, by majority vote, one additional member who shall be a qualified voter residing in the district and one of the constituent cities or towns.

One of the two members initially appointed by the governing body of each constituent city or town shall serve for a term which shall expire 30 days following the next regular election held for election of the governing body by which the member was appointed; and the other member shall serve for a term which shall expire two years thereafter. Successor members shall serve for a term of four years.

The member elected by the district board and his successors in office shall serve for a term of four years.

(c) Reappointment; Vacancies; Removal; Term.—Members of a district board may be reappointed. If a vacancy shall occur on a district board, the governing body which appointed the member who previously filled the vacancy shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed for cause by the governing board that appointed him. All members shall serve until their successors have been duly appointed and qualified.

(d) District Board Procedures.—Each member of the district board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge

faithfully the duties of his office; and a record of each such oath shall be filed with the clerk or clerks of the board or boards of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The officers of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as are determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed ten dollars (\$10.00) for each meeting attended, and may be reimbursed the amount of actual expenses incurred by them in the performance of their duties. (1961, c. 795, s. 4; 1963, c. 471; 1973, c. 512, s. 2.)

Editor's Note.—

Session Laws 1973, c. 512, s. 6, contains

The 1973 amendment rewrote this section. a severability clause.

§ 153-299. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings.—If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board or boards of commissioners of the county or counties within which the district lies and shall file with the board or boards of commissioners and with the Board of Water and Air Resources a report setting forth the plans of the district for extending sewerage service to the political subdivision or unincorporated area. The report shall include:

- (1) A map or maps of the district and adjacent territory showing the present and proposed boundaries of the district; the existing major sewer interceptors and outfalls; and the proposed extension of such interceptors and outfalls.
- (2) A statement setting forth the plans of the district for extending sewerage services to the territory proposed to be included, which plans shall:
 - a. Provide for extending sewerage service to the territory included on substantially the same basis and in the same manner as such services are provided within the rest of the district prior to inclusion of the new territory.
 - b. Set forth a proposed time schedule for extending sewerage service to the territory proposed to be included.
 - c. Set forth the estimated cost of extending sewerage service to the territory proposed to be included; the method by which the district proposes to finance the extension; the outstanding existing indebtedness of the district, if any; and the valuation of assess-

able property within the district and within the territory proposed to be included.

- d. Contain a declaration of intent of the district board to conform with the plans set forth in the report in extending sewerage services to the territory proposed to be included; and a certification by the chairman of the district board to the effect that the matters and things set forth in the report are true to his knowledge or belief.

The board or boards of commissioners, through the chairmen thereof, shall thereupon request that a representative of the Board of Water and Air Resources hold a joint public meeting with the board or boards of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The chairman of the Board of Water and Air Resources and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county or counties at least 30 days prior to the hearing and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the district and in any such political subdivision or unincorporated area, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board or boards of commissioners with the concurrence of the representative of the Board of Water and Air Resources.

If, after such hearing, the Board of Water and Air Resources and the board or boards of commissioners shall determine that the inclusion of such political subdivision or unincorporated area in the district will preserve and promote the public health and welfare, the Board of Water and Air Resources shall adopt a resolution to that effect, defining the boundaries of the district, including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district.

If, at or prior to such public hearing, there shall be filed with the district board a petition, signed by not less than ten per centum (10%) of the freeholders residing in the district, requesting an election to be held therein on the question of including any such political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with the applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Board of Water and Air Resources has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation within the district, the first publication to be at least 30 days prior to the election.

Notice of the resolution of the Board of Water and Air Resources, or in the event that an election pursuant to this section is held, notice of the results of the election, approving the inclusion of the political subdivision or unincorporated area within the district shall be published as provided in G.S. 153-297.

Any action or proceeding in any court to set aside a resolution of the Board of Water and Air Resources or an election approving the inclusion of a political subdivision or unincorporated area within a district or to obtain any other relief upon

the ground that such resolution or election or any proceeding or action taken with respect to the inclusion of the political subdivision or unincorporated area within the district is invalid, must be commenced within 30 days after the first publication of the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the election or the inclusion of the political subdivision or unincorporated area in the district shall be asserted, nor shall the validity of the resolution or the election or the inclusion of the political subdivision or unincorporated area be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Any political subdivision or unincorporated area included within an existing district by resolution of the Board of Water and Air Resources or by such resolution and election shall be subject to all debts of the district.

The annexation by a city or town within a metropolitan sewerage district of an area lying outside such district shall not be construed as the inclusion within the district of an additional political subdivision or unincorporated area within the meaning of the provisions of this section; but any such areas so annexed shall become a part of the district and shall be subject to all debts thereof.

Immediately following the inclusion of any additional political subdivision or unincorporated area within an existing district, members representing such additional political subdivision or unincorporated area shall be appointed to the district board in the manner provided in G.S. 153-298. The terms of office of the members first appointed to represent such additional subdivision or area may be varied for a period not to exceed six months from the terms provided for in G.S. 153-298, so that the appointment of successors to such members may more nearly coincide with the appointment of successors to members of the existing board; and all successor members shall be appointed for the terms provided for in G.S. 153-298. (1961, c. 795, s. 5; 1973, c. 512, s. 3.)

Editor's Note. — The 1973 amendment Session Laws 1973, c. 512, s. 6, contains rewrote this section. a severability clause.

§ 153-309. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.—After each assessment for taxes following the creation of the district, the board or boards of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount and certify such rate to the board or boards of commissioners. The board or boards of commissioners shall include the number of cents per one hundred dollars (\$100.00) certified by the district board in its next annual levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board or boards of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as pro-

vided in G.S. 159-28 and, after June 30, 1973, G.S. 159-31. (1961, c. 795, s. 15; 1973, c. 512, s. 4.)

Editor's Note. — The 1973 amendment inserted "or boards" in the first sentence of the first paragraph and in three places in the second paragraph and added "and, after June 30, 1973, G.S. 159-31" at the end of the second paragraph. The amend-

ment also made changes in wording in the second sentences of the first and second paragraphs.

Session Laws 1973, c. 512, s. 6, contains a severability clause.

§§ 153-311, 153-312: Repealed by Session Laws 1971, c. 780, s. 31, effective July 1, 1973.

§ 153-318. Rights-of-way and easements in streets and highways.—A right-of-way or easement in, along, or across any State highway system road or street, and along or across any city or town street within a district is hereby granted to a district in case such right of way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Board of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1961, c. 795, s. 24; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, of Transportation" for "State Highway effective July 1, 1973, substituted "Board Commission."

§ 153-321. District may assume sewerage system indebtedness of political subdivision; approval of voters; actions founded upon invalidity of election; tax to pay assumed indebtedness.—A district may assume all outstanding indebtedness of any political subdivision in the district lawfully incurred for paying all or any part of the cost of a sewerage system, subject to approval thereof by a majority of the qualified voters of the district voting at an election thereon. Any such election shall be called and held in accordance with the provisions of the Local Government Finance Act, insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, recorded and published as provided in the Local Government Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. In the event that any such indebtedness of a political subdivision is assumed by the district, there shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay such assumed indebtedness and the interest thereon as the same become due and payable; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. Such tax shall be determined, levied and collected in the manner provided by G.S. 153-309 and subject to the provisions of said section.

Nothing herein shall prevent any political subdivision from levying taxes to provide for the payment of its debt service requirements as to indebtedness incurred for paying all or any part of the cost of a sewerage system if such debt service requirements shall not have been otherwise provided for. (1961, c. 795, s. 27; 1973, c. 512, s. 5.)

Editor's Note. — The 1973 amendment substituted "the Local Government Finance Act" for "G.S. 153-306" near the beginning and for "said G.S. 153-306" at

the end of the second sentence of the first paragraph.

Session Laws 1973, c. 512, s. 6, contains a severability clause.

ARTICLE 28.*Rural Recreation Districts.***§ 153-368. Election to be held upon petition of voters.**

Local Modification. — Guilford: 1973, c. 263.

ARTICLE 29.*County Service Districts.*

§ 153-383. Title; effective date. — This Article may be cited as "The County Service District Act of 1973," and is enacted pursuant to Article V, Sec. 2(4) of the Constitution of North Carolina, effective July 1, 1973. (1973, c. 489, s. 1.)

Cross Reference. — As to the effective date of the 1973 act which enacted this Article, see also the notes to §§ 153-390 and 153-391.

Sections 153-383 through 153-391 Trans-

ferred Effective Feb. 1, 1974. — Sections 153-383 through 153-391 are transferred and renumbered §§ 153A-300 through 153A-308 by Session Laws 1973, c. 822, s. 2, effective Feb. 1, 1974.

§ 153-384. Purposes for which districts may be established. — The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

- (1) Beach erosion control and flood and hurricane protection works;
- (2) Fire protection;
- (3) Recreation;
- (4) Sewage collection and disposal systems;
- (5) Solid waste collection and disposal systems;
- (6) Water supply and distribution systems. (1973, c. 489, s. 1.)

§ 153-385. Definition of service districts. — (a) **Standards.** — In determining whether to establish a proposed service district, the board of commissioners shall consider:

- (1) The resident or seasonal population and population density of the proposed district;
- (2) The appraised value of property subject to taxation in the proposed district;
- (3) The present tax rates of the county and any cities or special districts in which the district or any portion thereof is located;
- (4) The ability of the proposed district to sustain the additional taxes necessary to provide the services planned for the district;
- (5) If it is proposed to furnish water, sewer, or solid waste collection services in the district, the probable net revenues of the projects to be financed and the extent to which the services will be self-supporting;
- (6) Any other matters that the commissioners believe to have a bearing on whether the district should be established.

The board of commissioners may establish a service district if, upon the information and evidence it receives, the board finds that

- (1) There is a demonstrable need for providing in the district one or more of the services listed in G.S. 153-384;
- (2) It is impossible or impracticable to provide those services on a county-wide basis;

- (3) It is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax levies; and
- (4) There is a demonstrable demand for the proposed services by persons residing in the district.

Territory lying within the corporate limits of a city or sanitary district may not be included unless the governing body of the city or sanitary district agrees by resolution to such inclusion.

(b) Report.—Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:

- (1) A map of the proposed district, showing its proposed boundaries;
- (2) A statement showing that the proposed district meets the standards set out in subsection (a); and
- (3) A plan for providing one or more of the services listed in G.S. 153-384 to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice.—The board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed by first class mail at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date.—The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners. (1973, c. 489, s. 1.)

§ 153-386. Extension of service districts.—(a) Standards.—The board of commissioners may by resolution annex territory to any service district upon finding that:

- (1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and
- (2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. — The board of commissioners may also by resolution extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the board for annexation to the service district.

(c) Territory lying within the corporate limits of a city or sanitary district may not be annexed to a service district unless the governing body of the city or sanitary district agrees by resolution to such annexation.

(d) Report.—Before the public hearing required by subsection (e), the board shall cause to be prepared a report containing:

- (1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;
- (2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a), (b), and (c); and
- (3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the clerk to the board for at least two weeks before the date of the public hearing.

(e) Hearing and Notice.—The board shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (d) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(f) Effective Date.—The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (1973, c. 489, s. 1.)

§ 153-387. Consolidation of service districts.—(a) The board of commissioners may by resolution consolidate two or more service districts upon finding that :

- (1) The districts are contiguous or are in a continuous boundary ;
- (2) The services provided in each of the districts are substantially the same ; or
- (3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report.—Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing :

- (1) A map of the districts to be consolidated ;
- (2) A statement showing the proposed consolidation meets the standards of subsection (a) ; and
- (3) If necessary, a plan for increasing the services for one of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the clerk to the board for at least two weeks before the public hearing.

(c) Hearing and Notice.—The board of commissioners shall hold a public hearing before adopting any resolution consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date.—The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the board. (1973, c. 489, s. 1.)

§ 153-388. Required provision or maintenance of services.—(a) New District.—When a county defines a new service district, it shall provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a county annexes territory to a service district, it shall provide, maintain, or let contracts for the services provided or maintained

throughout the district to the residents of the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

(c) **Consolidated District.**—When a county consolidates two or more service districts, one of which has had provided or maintained a lower level of services, it shall increase the services within that district (or let contracts therefor) to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 489, s. 1.)

§ 153-389. Abolition of service districts.—Upon finding that there is no longer a need for a particular service district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may by resolution abolish that district. The board shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board. (1973, c. 489, s. 1.)

§ 153-390. Taxes authorized; rate limitation. — A county may levy property taxes within defined service districts in addition to those levied throughout the county, in order to finance, provide or maintain for the districts services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

Property taxes may not be levied within any district established pursuant to this Article in excess of a rate on each one hundred dollars (\$100.00) value of property subject to taxation which, when added to the rate levied countywide for purposes subject to the rate limitation, would exceed the rate limitation established in G.S. 153-65(c), unless the portion of the rate in excess of this limitation is submitted to and approved by a majority of the qualified voters residing within the district. Any referendum held pursuant to this paragraph shall be held and conducted as provided in G.S. 153-65. (1973, c. 489, s. 1.)

Editor's Note. — Session Laws 1973, c. 489, s. 4, provides that all portions of the act except §§ 153-390 and 153-391 become effective, upon ratification, that §§ 153-390 and 153-391 become effective on July 1, 1973, but that all acts necessary to approve

a tax levy or issue bonds on or after July 1, 1973, must be taken at any time after the effective date of the act. The act was ratified May 14, 1973. As to the effective date of this Article, see also § 153-383.

§ 153-391. Bonds authorized.—A county may issue its general obligation bonds under the Local Government Bond Act to finance services, facilities, or functions provided within a service district. If a proposed bond issue is required by law to be submitted to and approved by the voters of the county, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than countywide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire county and by a majority of the total of those voting in all of the affected or to be affected service districts. (1973, c. 489, s. 1.)

Editor's Note. — Session Laws 1973, c. 489, s. 4, provides that all portions of the act except §§ 153-390 and 153-391 become effective, upon ratification, that §§ 153-390 and 153-391 become effective on July 1, 1973, but that all acts necessary to approve

a tax levy or issue bonds on or after July 1, 1973, must be taken at any time after the effective date of the act. The act was ratified May 14, 1973. As to the effective date of this Article, see also § 153-383.

Chapter 155.
County Treasurer.

Sec.

155-10 to 155-14. [Repealed.]

§§ 155-10 to 155-14: Repealed by Session Laws 1971, c. 780, s. 34, effective July 1, 1973.

Chapter 156.

Drainage.

Article 7B.

**Improvement, Renovation, Enlargement
and Extension of Canals, Structures
and Boundaries.**

Sec.

156-93.6. Rights-of-way and easements for existing districts.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

ARTICLE 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding.

Cited in Taylor v. Askew, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-10. Right to drain into canal. — Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Provided, further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening of such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury. (R. C., c. 40, s. 9; Code, s. 1305; 1887, c. 222; Rev., s. 3990; C. S., s. 5269; 1973, c. 108, s. 94.)

Editor's Note. — The 1973 amendment deleted "at termtime" following "county" in the third proviso of the second sentence.

§ 156-15. Amount of contribution for repair ascertained. — Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this Subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a magistrate, who shall give all parties at least three days' notice, and shall summon two disinterested freeholders who, together with the magistrate, shall meet on the premises and assess the damages sustained by the applicant, whereupon the magistrate shall enter judgment in favor

of the applicant for damages or for work done on such ditch or lands. (R. C., c. 40, s. 14; Code, s. 1310; 1889, c. 101; Rev., s. 3995; C. S., s. 5274; 1973, c. 108, s. 95.)

Editor's Note. — The 1973 amendment substituted "magistrate" for "justice of the peace" in one place and for "justice" in two places and deleted the former second sentence, which left the matter of costs to the discretion of the justice.

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-69. Nature of the survey; conservation and replacement of fish and wildlife habitat; structures to control and store water.—The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established among the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

The board of viewers shall consider the effect of the proposed improvements upon the habitat of fish and wildlife, and the laws and regulations of the Commission for Health Services. Their report shall include their recommendations and the estimated cost thereof, as to the conservation and replacement of fish and wildlife habitat, if they shall determine such shall be damaged or displaced by the proposed improvement. The board, to determine their recommendations, may consult governmental agencies, wildlife associations, individuals, or such other sources as they may deem desirable, to assist them in their considerations of and recommendations relating to, the conservation and replacement of fish and wildlife habitat.

The board of viewers shall consider the need for and feasibility of, the construction of structures which will do one or more of the following:

- (1) Control the flow of water,
- (2) Impound or store water and,
- (3) Provide areas for conservation and replacement of fish and wildlife habitat.

If structures are recommended for any one or more of said purposes, their report shall include:

- (1) Specifications therefor.
- (2) Location thereof together with the description of the area of land needed

for the purpose of said structure, i.e., water storage or impoundment, or fish and wildlife habitat.

(3) Estimate of cost thereof.

The report of the board of viewers shall set forth, in regard to the foregoing, the following information:

(1) The areas of land needed for construction and maintenance of:

- a. The canals and drainage system.
- b. Structures to:

1. To control the water,
2. Impound or store water and,
3. To conserve and replace fish and wildlife habitat.

(2) Upon whose land such areas are located.

(3) The area of land necessary to be acquired from each landowner.

The map accompanying the report shall have shown thereon, the location of the areas of land needed for the construction and maintenance of the following:

(1) The canal and drainage system.

(2) Structures to:

- a. Control the flow of water
- b. Impound or store the water
- c. Conserve and replace fish and wildlife habitat.

The board of viewers may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of the State of North Carolina whereby such agency will furnish all or a part of the service necessary to obtain the information set forth in the preceding paragraph and in G.S. 156-68.

The board of viewers may accept such information as furnished by such agencies and include such information in their final report to the clerk.

The board of viewers and engineers of the district may use control or semicontrol, mosaic aerial photographs or other sources and stereoscopic or other methods, generally used and deemed acceptable by civil and drainage engineers for the purpose of obtaining the information required in this section and in lieu of a detailed ground survey. In the event a detailed ground survey is not made, only those ground markings need be made as the board of viewers deem necessary. The location of the proposed canals must be shown on the ground prior to actual construction. (1909, c. 442, s. 10; C. S., s. 5327; 1959, c. 597, s. 1; 1961, c. 614, ss. 5, 9; 1965, c. 1143, s. 1; 1973, c. 476, s. 128.)

Editor's Note.—

Services" for "State Board of Health" in

The 1973 amendment, effective July 1, 1973, substituted "Commission for Health" the first sentence of the second paragraph.

§ 156-70.1. When title deemed acquired for purpose of easements or rights-of-way; notice to landowner; claim for compensation; appeal.

Applied in *Taylor v. Askew*, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-75. Appeal from final hearing.—Any landowner, party petitioner or the drainage district may, within 10 days after the ruling or adjudication by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. Such appeal shall be taken and prosecuted as provided in special proceedings. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any appeal to the superior court in session or in chambers taken under this section or any other section or provision of the drainage laws

of the State, general or local, the same shall have precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. (1909, c. 442, s. 17; 1911, c. 67, s. 3; C. S., s. 5333; 1923, c. 217, s. 2; 1969, c. 192, s. 1; 1973, c. 108, s. 96.)

Editor's Note.—

The 1973 amendment substituted "ses-

sion" for "term time" in the fourth sentence.

ARTICLE 7.*Construction of Improvement.*

§ 156-88. Drainage across public or private ways.—Where any public ditch, drain or watercourse established under the provisions of this Subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the Board of Transportation the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Board of Transportation, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Board of Transportation shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Board of Transportation and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the appellate division, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Board of Transportation is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Board of Transportation for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Board of Transportation.

Where any public ditch, drain, or watercourse established under the provisions of this subchapter crosses a public highway or road, not under the supervision of the Board of Transportation, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the Board of Transportation, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private

road; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the Board of Transportation or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11; 1969, c. 44, s. 78; 1973, c. 507, s. 5.)

Editor's Note.—

"State Highway Commission"

The 1973 amendment, effective July 1, 1973, substituted "Board of Transporta-

tion" for "Commission."

ARTICLE 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

§ 156-93.6. Rights-of-way and easements for existing districts.

Applied in *Taylor v. Askew*, 17 N.C.
App. 620, 195 S.E.2d 316 (1973).

ARTICLE 10.

Report of Officers.

§ 156-134. Duties of the auditor.—The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a session of superior court in the county following the first Monday in July, and a copy to the solicitor of the judicial district in which the county is located, and it shall be the duty of such solicitor to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as

the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C. S., s. 5378; 1963, c. 767, s. 4; 1973, c. 108, s. 97.)

Editor's Note.— The 1973 amendment substituted "ses-
sion" for "term" near the middle of the last paragraph.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1973

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1973 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN

Attorney General of North Carolina

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